

(25,438)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 608.

WILLIAM R. STAATS COMPANY AND TITLE INSURANCE
AND TRUST COMPANY, APPELLANTS,

v.

SECURITY TRUST AND SAVINGS BANK, AS TRUSTEE, &c.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

INDEX.

	Page
Caption	4
Names and addresses of attorneys.....	1
Record from district court of the United States for the southern dis- trict of California.....	1
Citation	1
Bill of complaint.....	4
Exhibit "A"—Trust deed, dated March 19, 1912, from Fielding J. Stillson to Title Insurance and Trust Company.....	8
Subpoena	20
Answer	22
Notice of motion to refer to special master.....	29
Exhibit A—Affidavit of W. T. Craig.....	30
Order appointing special master.....	32
Report of special master.....	33
Exceptions to report of special master.....	55
Order on exceptions.....	60

	Page
Decree	62
Summary of debts and assets <i>in re</i> Stilson, bankrupt.....	63
Schedule A—Statement of all debts of bankrupt <i>in re</i> Stilson, bankrupt	64
Schedule B—Statement of all property of bankrupt <i>in re</i> Stilson, bankrupt	91
Transcript of testimony.....	108
Proceedings before master.....	100
Testimony of Fielding J. Stilson.....	112
J. A. Craig.....	179
Carroll A. Stilson.....	183
John Earl Jardine.....	187
J. A. Coggeshall.....	207
W. W. Eakins.....	200
Carroll A. Stilson (recalled).....	218
Exhibit A—Check of Fielding J. Stilson Co., March 15, 1912....	221
Notice of appeal.....	222
Petition for appeal.....	224
Allowance of appeal.....	225
Assignment of errors.....	226
Præcipe for transcript.....	228
Clerk's certificate	230
Order enlarging time to file record.....	233
Order enlarging time to file record.....	234
Caption to proceedings in U. S. circuit court of appeals.....	237
Order of submission.....	239
Order filing opinion, &c.....	240
Opinion	241
Decree	251
Order filing opinion on petition for rehearing.....	253
Opinion on petition for rehearing.....	253
Order denying rehearing.....	255
Order staying mandate.....	256
Petition for appeal.....	257
Allowance of appeal.....	260
Assignment of errors.....	261
Bond on appeal.....	266
Præcipe for record.....	260
Clerk's certificate	272
Citation and service.....	273

United States
Circuit Court of Appeals
For the Ninth Circuit.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of
FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY, a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Southern District of California,
Southern Division.

Names and Addresses of Attorneys.

For Appellant:

WILLIAM T. CRAIG, Esq., 701 Higgins Building, Los Angeles, California.

For Appellees:

Messrs. O'MELVENY, STEVENS & MILLIKEN and WALTER K. TULLER, Esq.,

825 Title Insurance Building, Los Angeles, California. [4*]

In the District Court of the United States, Southern District of California, Southern Division.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, and TITLE INSURANCE & TRUST COMPANY, a Corporation,

Defendants.

Citation on Appeal.

United States of America,—ss.

The President of the United States to Wm. R. Staats Company, a Corporation, and Title Insurance & Trust Company, a Corporation, Greeting:

You are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit in the City and County of San Fran-

*Page-number appearing at foot of of page of original certified Record.

cisco, State of California, on the 23d day of August, 1915, pursuant to the appeal duly obtained and filed in the clerk's office of the District Court of the United States for Southern District of California, Southern Division, wherein you as defendants are appellees and Security Trust & Savings Bank, a corporation, trustee in bankruptcy of Fielding J. Stilson Company, a corporation, bankrupt, is the appellant, to show cause, if any there be, why the order and decree and each of them in said appeal mentioned, should not be reversed and corrected and why speedy justice should not [5] be done to the parties in that behalf, and to do and receive what may appertain to justice to be done in the premises.

WITNESS, the Honorable OSCAR A. TRIPPET, United States District Judge for the Southern District of California, on the 26th day of July, in the year of our Lord one thousand nine hundred and fifteen.

OSCAR A. TRIPPET,
District Judge. [6]

[Endorsed]: (Original.) No. 235. In the United States District Court, Southern District of California, Southern Division. Security Tr. & Sav. Bank, a Corporation, Trustee, Complainant, vs. Wm. A. Staats Company et al., Defendants. Citation on Appeal. Filed Jul. 26, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Clerk.

Receipt of copy of the within is hereby admitted this July 26, 1915.

O'MELVENY, STEVENS, MILLIKIN and
WALTER K. TULLER,

Attorney for Defts. [7]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 235—CIVIL, S. D.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY,
a Corporation,

Defendant. [8]

In the District Court of the United States in and for the Southern District of California, Southern Division.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY, a Corporation,

Defendants.

Bill of Complaint.

To the Honorable OLIN WELLBORN, Judge of the District Court of the United States in and for the Southern District of California, Southern Division:

Security Trust & Savings Bank, a corporation, trustee in bankruptcy of the estate of Fielding J. Stilson Company, a corporation, bankrupt, brings this, its bill of complaint, against Wm. R. Staats Company, a corporation, and Title Insurance & Trust Company, a corporation, both of the County of Los Angeles, State of California;

Your orator complains and says:

I.

That during all the times mentioned the complainant was and now is a corporation organized under the laws of the State of California and doing business in Los Angeles, California, and authorized by law and its charter (among other rights) to act as trustee in bankruptcy. [9]

II.

That during all the times mentioned the defendants, Wm. R. Staats Company and Title Insurance & Trust Company, were and each was and now is a corporation organized under the laws of the State of California.

III.

That on the second day of July, 1912, an Involuntary Petition in Bankruptcy was filed in the above court against Fielding J. Stilson Company, a corporation organized under the laws of the State of

California, and that thereafter such proceedings were had that on the 24th day of October, 1912, an Adjudication in Bankruptcy was duly made and entered adjudging said Fielding J. Stilson Company a bankrupt and thereafter such proceedings were had that on the 10th of December, 1912, the complainant was elected trustee in bankruptcy of the estate of said Fielding J. Stilson Company, a bankrupt. On the 11th day of December, 1912, said complainant duly qualified as such trustee by furnishing bond as required by the order of the Court, and ever since said last-named date the complainant has been and now is the duly elected, qualified and acting trustee in bankruptcy of Fielding J. Stilson Company, bankrupt.

IV.

On the 19th day of March, 1912, said defendant, Wm. R. Staats Company, was a general unsecured creditor of Fielding J. Stilson Company, in the sum of Three Thousand Eight Hundred and Seventy Dollars (\$3,870,00). That on said date Fielding J. Stilson Company was indebted to a large number of other general and unsecured creditors and was then and ever since has been insolvent, and did not have sufficient assets or property which, in the aggregate at a fair valuation, would enable it to pay and satisfy its debts. That on said date the said Wm. R. Staats [10] Company knew and had reasonable cause to believe that the said Fielding J. Stilson Company was so insolvent. That on said date Fielding J. Stilson Company made, executed and delivered unto the defendant, Title Insurance

& Trust Company, a corporation, a deed of trust, a copy of which is hereto attached and marked exhibit "A" and made a part of this complaint.

That said deed was executed and acknowledged so as to permit it to be recorded, and it was recorded in the office of the county recorder of Los Angeles County, California, on the 20th day of March, 1912, in Book 4924, Page 186 of Deeds, Los Angeles County Records. That said conveyance was made and received as security for the aforesaid indebtedness, to Wm. R. Staats Company. That the effect of said conveyance was and is to secure the said Wm. R. Staats Company, and to enable it to receive a greater percentage of its indebtedness than any other creditors of the same class, to wit, general unsecured creditors. That said transfer of said property was then and there made by said Fielding J. Stilson Company with intent to give said Wm. R. Staats Company a preference as a creditor of said Fielding J. Stilson Company in violation of the acts of Congress to establish a uniform system of bankruptcy in the United States.

V.

That on the 23d day of December, 1912, complainant herein demanded of said Wm. R. Staats Company and said Title Insurance & Trust Company a reconveyance of said property, but the said defendants each then and ever since have refused and failed to execute or deliver any reconveyance of any or all of said property, and that said transfer and conveyance is now in full force and effect.

All of which acts, doings and proceedings are con-

trary to [11] equity and good conscience and tend to the manifest wrong, injury and oppression of the complainant in the premises.

IN CONSIDERATION WHEREOF, and inasmuch as complainant is remediless according to the strict rule of common law, and can only have relief in a court of equity where matters of this nature are cognizable, said complainant now prays that said defendants be required according to their best and utmost knowledge, remembrance, information and belief, full, true and perfect answer make to this bill, and not under oath or affirmation, the benefit of which is hereby expressly waived; that this Court grant a decree that said deed, transfer and conveyance be vacated, set aside and declared void, and that neither of said defendants has any right, title, interest, estate, claim or lien in or to said real property described in said exhibit "A" or any part thereof, and for costs of suit, and for such other and further relief in the premises as the Court may require and as to the Court may seem meet and agreeable to equity.

[Seal] SECURITY TRUST & SAVINGS BANK.

W. A. ELLIS,

Assistant Secretary,

Trustee in Bankruptcy of the Estate of Fielding J.
Stilson Company, a Corporation, Bankrupt.

W. T. CRAIG and

CARROLL ALLEN,

Solicitors for Complainant. [12]

[Exhibit "A" to Bill of Complaint—Trust Deed
Dated March 19, 1912, from Fielding J. Stilson
to Title Insurance and Trust Company.]

COPY.

THIS DEED OF TRUST, Made this 19th day of March, 1912, Between Feilding J. Stilson Company, a corporation *a corporation* organized and existing under the laws of the State of California, having its principal place of business in Los Angeles, California, party of the first part, TITLE INSURANCE AND TRUST COMPANY, a corporation having its principal place of business at Los Angeles, California, party of the second part (hereinafter sometimes called the Trustee), and William R. Staats Company, a corporation, party of the third part:

WITNESSETH: That, Whereas, said party of the first part is indebted to said party of the third part in the sum of Three Thousand Eight Hundred and Seventy (\$3,870.00) Dollars, and has agreed to pay the same, with interest, according to the terms of one certain Promissory Note (certified by said Trustee to be the promissory Note mentioned as secured hereby) in words and figures as follows:

\$3,870.00

Los Angeles, California, March 19th, A. D. 1912.

One day after date, for value received Fielding J. Stilson Company, a corporation, promises to pay to William R. Staats Company, a corporation or order, at Los Angeles, California the sum of Three Thousand Eight Hundred and Seventy (\$3,870.00) Dol-

lars, with interest from date hereof until paid, at the rate of seven (7) per cent. per annum, payable monthly; should the interest not be so paid, it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this Note. [13]

Principal and interest payable in gold coin of the United States of the present standard. This note is secured by a certain Deed of Trust to the Title Insurance and Trust Company, a corporation.

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

President.

[Corporate Seal] By CARROLL A. STILSON,

Secretary.

NOW, THEREFORE, in consideration of the indebtedness evidenced by said Note . . . , and for the purpose of securing the payment thereof with interest as therein provided, and also to secure the repayment of any sum of money with interest thereon that may otherwise be or become due or payable to either the parties of the second or third part under the provisions of this Instrument, and also to secure the repayment of such additional sums, not to exceed \$1,935.00, with interest thereon, as may be hereafter borrowed and received by said party of the first part from said party of the third part and evidenced by another Promissory Note or Notes executed and delivered therefor by said party of the first

part to the said party of the third part (said Note or Notes, when executed and delivered, to be certified by said Trustee as aforesaid), said party of the first part does by these presents GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto said party of the second part that certain real property situate in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

Lot Seventeen (17) Block Nine (9), Lots two (2), three (3), six (6) and seven (7) Block (11) Angeleno Heights Tract as per map recorded in Book 7, page 88 Miscellaneous Records of said County.

Lots Sixty-six (66), Sixty-seven (67), Sixty-eight (68) [14] and Sixty-nine (69) Block Fifteen and one-half ($15\frac{1}{2}$), Lot Forty-three (43) Block Sixteen (16), Lot Five (5) Block Twenty (20), Lots Three (3) and Twenty-seven (27) in Block Twenty-nine (29) Angeleno Heights Tract as per map recorded in Book 10, page 63 Miscellaneous Records of said County.

Lots One (1) and Sixteen (16) in Block Twenty-five (25) Angeleno Heights Tract, as per map recorded in Book 12, Page 25 Miscellaneous Records of said County.

TO HAVE AND TO HOLD the same upon the trusts hereinafter expressed, to wit:

FIRST: During the continuance of these trusts, party of the first part agrees to pay when due, all taxes, assessments and incumbrances which may be or appear to be liens upon said property, or any part thereof, including taxes levied or assessed upon the debt secured hereby; to keep the buildings in-

sured against loss by fire to the amount required by and in such insurance companies as may be satisfactory to party of the third part, loss, if any, payable to said party of the third part; and to keep said property in good condition and repair and to permit no waste thereof. .

Should said property, or any part thereof require any inspection, repair, cultivation, irrigation, protection or insurance other than that provided by party of the first part, then the parties of the second and third parts (they being hereby made the sole judges as to the necessity therefor) may without notice to party of the first part, enter or cause entry to be made upon said property and may inspect, repair, cultivate, irrigate, protect or insure said property in such manner or amount as they may deem necessary.

Said parties of the second and third parts, or either of them, at their option, may purchase, compromise or pay all or any adverse claims, liens or incumbrances affecting the title [15] to said property or these trusts, or which, in their judgment, seem to affect the same, and may contest any taxes, assessments, adverse claims, liens or incumbrances, and may prosecute or defend any suit or proceeding instituted for the enforcement thereof, and may settle and compromise any claims which, in their judgment, affect or seem to affect the title to said property or these trusts, but they shall not be obligated to make any such payments or to perform any such service.

These trusts shall be and continue as security to

said parties of the second and third parts for the payment of the indebtedness evidenced by said Promissory Note; for the repayment of any additional sums, with interest thereon, borrowed by said party of the first part, as herein provided; for the repayment of any sums that may be expended or advanced by parties of the second and third parts under the terms hereof, together with interest thereon at the same rate borne by the Promissory Note.... hereinbefore set out; and for the costs, fees, charges and expenses of this trust and of any service rendered under the terms hereof.

Said party of the first part agrees to repay without demand all sums so advanced or expended by said parties of the second and third parts or either of them, and a failure to pay said sums on or before the next date thereafter when an interest payment upon said Promissory Note becomes due shall constitute a default for which all sums secured hereby shall become immediately due and payable at the option of the party of the third part, and for which the Trustee may proceed to sell as hereinafter provided.

SECOND: If said party of the first part shall pay, or cause to be paid, when due, the indebtedness aforesaid with the [16] interest thereon, together with all other sums secured or intended to be secured hereby, and shall deliver to said Trustee written notice from said party of the third part of the full payment thereof, and shall surrender the said Promissory Note to said Trustee for cancellation, and upon demand shall pay all other sums secured or in-

tended to be secured hereby, including the costs, fees, charges and expenses of this Trust and of the reconveyance of the property aforesaid, then said Trustee shall reconvey, without warranty, all the estate in the premises aforesaid to it by this instrument granted unto the said party of the first part, its successors and assigns, at its request and cost, or so much thereof as shall then be held by said Trustee.

THIRD: If default shall be made in the payment of any of said sums of principal or interest when due, as provided in said Promissory Note, or in the payment of any sums herein provided to be paid or repaid, or of any of the interest thereon, then said Trustee, on written demand by the party of the third part but without the necessity of making demand on the party of the first part for the payment of any of said sums, shall sell the above granted property, or such part thereof as it shall deem necessary to sell in order to accomplish the objects of these trusts.

Such sale shall be made in the following manner, namely:

Said Trustee shall publish notice of the time and place of such sale, with a description of the property to be sold, at least twice a week for six successive weeks, in some newspaper published in the City of Los Angeles, California, and may from time to time postpone such sale by publication of a notice of postponement, in the same newspaper at least once each week prior to the date of the sale fixed by said notice of postponement, or at its [17] option, by public announcement thereof at the time and place of sale

so advertised; but, in case of sale of property situate outside of Los Angeles County, the notice of sale shall also in like manner be published in a newspaper published in the County in which the property is situated; but if there be no newspaper published in any County as often as twice a week, then such notice shall be published for six successive weeks in every issue of such newspaper published in such County during such period; and on the day of sale so fixed said Trustee may sell the property so advertised or any portion thereof at public auction, either in said City of Los Angeles or, at its discretion, in any County in which any part of said property may be situated, to the highest bidder for cash in said gold coin.

Said Trustee may sell said property as a whole, or in such parcels or subdivisions as it may deem best, or part at one time and part at another time, and after any such sale and after due payment made, shall execute and deliver to the purchaser or purchasers a Deed or Deeds of Grant conveying the property so sold to such purchaser or purchasers, but without covenant or warranty of any kind, express or implied, regarding the title or incumbrances;

And out of the proceeds of such sale or sales shall pay:

First: The expenses of such sale, together with the costs, fees, charges and expenses of this trust, including the compensation of the party of the second part as Trustee hereunder in the sum of Two Hundred and Thirty-five (\$235.00) Dollars in said gold

coin of the United States, which said amounts shall become due and payable upon any written demand made by the said party of the third part for the sale of the property mentioned in this instrument.

Second: All sums which may have been paid or advanced in [18] accordance with the provisions hereof and not repaid, together with the interest accrued thereon.

Third: The amount due and unpaid on said Promissory Note herein set out, with interest accrued thereon.

Fourth: Any additional sums, with interest accrued thereon, borrowed by said party of the first part from said party of the third part, evidenced by another Promissory Note or Notes, as hereinbefore provided.

And Lastly: The balance or the surplus of such proceeds, if any, to the order of said party of the first part, its successors or assigns.

In the event of a sale of said property or any part thereof, and the execution of a Deed or Deeds therefor under these trusts, then the recitals therein of default, publication of notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale shall be conclusive proof of such facts; and any such Deed or Deeds shall be conclusive against all persons as to such facts recited therein; and the acknowledgment of the receipt of the purchase money contained in any Deed executed to a purchaser, as aforesaid, shall be a sufficient dis-

charge to such purchaser from all obligation to see to the proper application of the purchase money as herein provided.

The Trustee may, at any time without notice, upon written request of the party of the third part, reconvey portions of the property conveyed hereby less than the whole without affecting the personal liability of any person for the payment of the indebtedness mentioned as secured hereby or the effect of this Deed of Trust upon the remainder of said property and without liability of the Trustee for Reconveyance so made. [19]

This Deed of Trust secures the payment of all the indebtedness and the performance of all of the obligations hereinbefore referred to, and in all its parts applies to, inures to the benefit of, and binds the heirs, administrators, executors, successors and assigns of all and each of the parties hereto.

This Deed of Trust shall not be effective unless, **PRIOR TO ITS RECORDATION**, the trust is accepted by said Trustee, under its corporate name and seal, by a duly authorized official thereof.

IN WITNESS WHEREOF, the party of the first part has hereunto caused its corporate name and seal to be affixed by its, President, and, Secretary, thereunto duly authorized by a resolution passed by its Board of Directors at a legal meet-

ing thereof duly convened and held on the 19th day of March, 1912.

FIELDING J. STILSON COMPANY.

By **FIELDING J. STILSON,**
President.

By **CARROLL A. STILSON,**
Secretary.

The foregoing trust is hereby accepted.

**TITLE INSURANCE AND TRUST
COMPANY.**

By **THEO. A. SIMPSON,**
Assistant Trust Officer.

State of California,
County of Los Angeles,—ss.

On this 19th day of March, 1912, before me, J. E. Coggeshall, a notary public in and for said county, personally appeared Fielding J. Stilson, known to me to be the president, and Carroll A. Stilson, known to me to be the secretary of Fielding J. Stilson Company, the corporation that executed the within and foregoing instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named and [20] acknowledged to me that such corporation executed the same.

WITNESS MY HAND and official seal the day and year in this certificate first above written.

J. E. COGGESHALL,
Notary Public in and for the County of Los Angeles,
State of California.

The trustee's charges and expenses in an ordinary sale of property in Los Angeles County will be based

upon the following schedule, and the proper amount should be inserted in the blank provided for that purpose.

For any sum not exceeding	\$ 500.00...	\$ 75.00
Over \$ 500.00 and not exceeding	1,000.00...	100.00
Over 1,000.00 and not exceeding	2,000.00...	150.00
Over 2,000.00 and not exceeding	3,500.00...	200.00
Over 3,500.00 and not exceeding	5,000.00...	235.00
Over 5,000.00 and not exceeding	7,500.00...	285.00
Over 7,500.00 and not exceeding	10,000.00...	320.00
Over 10,000.00 and not exceeding	15,000.00...	350.00
\$25.00 for each \$5,000.00 or fraction thereof over \$15,000.00.		

In all cases the note must be surrendered to the trustee for cancellation when reconveyance is requested, accompanied by the written request of the owner of the note for such reconveyance.

A charge of \$1.50 will be made for a reconveyance hereunder.

[Endorsed]: Register No. 12,629. Trust Deed. Corporation. Fielding J. Stilson Company to Title Insurance and Trust Company, as Trustee for William R. Staats Company. Dated March 19, 1912. Title Insurance and Trust Company, Cor. Franklin and New High Sts., Los Angeles, Cal. Order No. —. Notice to County Recorders. Under no circumstances must this Trust Deed be mailed or delivered to any person other than the Title Insurance and Trust Company, Cor. Franklin and New High Sts., Los Angeles, Cal. Recorded at request of Grantee March 20, 1912, at 9 A. M. In Book 4924, page 186, of Deeds Los Angeles County Records. C.

L. Logan; County Recorder. By G. W. Taylor.
[21]

United States of America,
Southern District of California,
Southern Division,
County of Los Angeles,—ss.

W. A. Ellis, being duly sworn, says: That he is the assistant secretary of the Security Trust & Savings Bank, a corporation, trustee in bankruptcy of Fielding J. Stilson Company, a corporation, bankrupt, in the foregoing-entitled matter; that he has heard read the foregoing Bill of Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters, that he believes it to be true.

[Seal]

W. A. ELLIS.

Subscribed and sworn to before me this 20th day of January, 1913.

[Notarial Seal]

F. L. WARNER,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 235—Civil. In United States District Court, Southern District of California, Southern Division. Security Trust & Savings Bank, Trustee in Bakruptcy of Fielding J. Stilson Co., a Corporation, Bankrupt, Complainant, vs. Wm. R. Staats Co. & Title Insurance & Trust Co., Defendants. Bill of Complaint. W. T. Craig and Carroll Allen, Board of Trade Rooms, Equitable Savings Bank Building, Telephones Home 10112, Sunset Main 4622, Los Angeles, Cal., Solicitors for Com-

plainant. Filed Jan. 22, 1913. Wm. M. Van Dyke,
Clerk. By Chas. N. Williams, Deputy Clerk. [22]

[Subpoena ad Respondendum.]

UNITED STATES OF AMERICA.

*District Court of the United States, Southern District
of California, Southern Division.*

IN EQUITY.

The President of the United States of America,
Greeting: To the Wm. R. Staats Company, a
Corporation, and the Title Insurance & Trust
Company, a Corporation:

YOU ARE HEREBY COMMANDED, That you
be and appear in said District Court of the United
States aforesaid, at the courtroom in Los Angeles,
California, on the 3d day of March, A. D. 1913, to
answer a Bill of Complaint exhibited against you
in said court by the Security Trust & Savings Bank,
a corporation, trustee in bankruptcy, of the estate
of Fielding J. Stilson Company, a corporation, bank-
rupt, said complainant being a corporation organized
under the laws of California, and doing business in
Los Angeles, California, and authorized by law and
its charter to act as trustee in bankruptcy and to
do and receive what the said Court shall have consid-
ered in that behalf. And this you are not to omit,
under the penalty of **FIVE THOUSAND DOL-
LARS.**

WITNESS, the Honorable **OLIN WELLBORN,**
Judge of the District Court of the United States, this
22d day of January, in the year of our Lord one thou-

sand nine hundred and thirteen and of our Independence the one hundred and thirty-seventh.

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk. [23]

MEMORANDUM PURSUANT TO RULE 12,
SUPREME COURT U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of March next, at the clerk's office of said court pursuant to said Bill; otherwise the said Bill will be taken *pro confesso*.

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk.

Clerk's office: Los Angeles, California.

[Endorsed]: (Original.) No. 235-Civil. U. S. District Court, Southern District of California, Southern Division. In Equity. Security Trust & Savings Bank, Trustee, etc., vs. Wm. R. Staats Co. et al. Subpoena.

(In pencil.) Craig & Allen. Voluntary appearance entered and subp. not served. [24]

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

No. 235.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of **FIELD-
ING J. STILSON COMPANY**, a Corporation,
Bankrupt,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
**TITLE INSURANCE & TRUST COM-
PANY**, a Corporation,

Defendants.

Answer to Bill of Complaint.

To the Honorable **OLIN WELLBORN**, Judge of the
District Court of the United States in and for
the Southern District of California, Southern
Division.

Come now Wm. R. Staats Company and Title Insurance & Trust Company, defendants above named, and answers the bill of complaint herein, as follows:

I.

Admit all the matters and things alleged in paragraph numbered I in said bill of complaint.

II.

Admit all the matters and things alleged in paragraph numbered II in said bill of complaint.

III.

Admit all the matters and things alleged in para-

graph numbered III in said bill of complaint.

IV.

Defendants admit that on the 19th day of March, 1912, [25] defendant Wm. R. Staats Company was a creditor of said Fielding J. Stilson Company in and for the sum of three thousand eight hundred seventy dollars (\$3,870.00); but deny that at said time or at any time said Wm. R. Staats Company was a general unsecured creditor in such sum, or in any sum, or a general creditor, or an unsecured creditor, in such sum, or in any sum. These defendants aver that the mode or manner in which said indebtedness was incurred and that the relation of said Wm. R. Staats Company to said Fielding J. Stilson Company were as hereinafter more particularly set forth.

These defendants deny upon their information and belief that on said date said Fielding J. Stilson was insolvent, or that it has ever since been or at any time since has been insolvent; and deny that at said time, or at any time since said date said Fielding J. Stilson Company did not have sufficient property which would enable it to pay and satisfy its debts. These defendants deny that on said date, or at any time said William R. Staats Company knew or had reasonable cause to believe that said Fielding J. Stilson *J. Stilson* Company was so, or at all, insolvent. These defendants admit that on said 19th day of March, 1912, said Fielding J. Stilson Company made, executed and delivered to the defendant Title Insurance & Trust Company its deed of trust as alleged in said bill of complaint, and admit that the same was executed and acknowledged so as to permit it to be

recorded, and that it was recorded as in said bill of complaint alleged. That these defendants aver that the reason said deed of trust was made, executed and delivered by said Wm. R. Staats Company was as hereinafter more fully set forth, and not otherwise. Said defendants deny that the effect of said conveyance was and is, or was, or is, to secure to the said Wm. R. Staats Company, or to enable it to receive a greater [26] percentage of its indebtedness than any other general unsecured creditor of Fielding J. Stilson Company, or any other creditor of the same class as said Wm. R. Staats Company.

These defendants deny upon their information and belief that said transfer of said property was then and there, or at all, made by said Fielding J. Stilson Company with intent to give said Wm. R. Staats Company a preference as a creditor of said Fielding J. Stilson Company, and deny that the same was in violation of the acts of Congress to establish a uniform system of bankruptcy in the United States, or in violation of any law. Deny that the same or any of the acts, doings or proceedings alleged in said bill of complaint were or are contrary to equity or good conscience, or tend to the manifest wrong, or any wrong, injury or oppression of complainant in the premises, or at all.

V.

These defendants aver that the facts and circumstances leading up to and causing the execution of said deed of trust are as follows: That, on the 19th day of March, 1912, and for many months prior thereto, both said Fielding J. Stilson Company and

said defendant Wm. R. Staats Company were conducting a general brokerage business in stocks and bonds in the city of Los Angeles, county of Los Angeles, State of California; that on the 15th day of March, 1912, said Fielding J. Stilson Company requested defendant Wm. R. Staats Company to sell to it for cash certain shares of stock in the Amalgamated Oil Company, a corporation, at the rate of sixty-four and 50/100 dollars (\$64.50) per share. That pursuant to said request defendant Wm. R. Staats Company then and there sold to said Fielding J. Stilson Company sixty shares of the stock of said Amalgamated Oil Company, at sixty-four and fifty hundredths dollars (\$64.50) per share, and delivered certificates of stock representing said shares to said Fielding J. Stilson Company, it being the understanding and [27] agreement of said Fielding J. Stilson Company and said defendant Wm. R. Staats Company, that said sale was made for cash. That said Fielding J. Stilson Company then and there delivered to said Wm. R. Staats Company its check on the Citizens National Bank (which was then and there a corporation regularly doing a banking business in the City of Los Angeles) in payment for said stock. That in due course of business said Wm. R. Staats Company presented said check for payment, and it was then and there notified, and it was the fact, that said Fielding J. Stilson Company did not have sufficient funds in said bank at said time of presentation, and had not had either at the time said check was drawn or at any time thereafter sufficient funds in said bank to meet said check, and on that

ground said bank refused to pay said check.

That all of said transactions took place in the City of Los Angeles, County of Los Angeles, State of California, and that under the laws of said State of California the facts as hereinbefore set forth entitled said Wm. R. Staats Company to rescind said contract and sale and to demand and receive back from said Fielding J. Stilson Company said shares of stock hereinbefore referred to. That thereupon said Wm. R. Staats Company reported the fact of its presentation of said check and refusal of payment to said Fielding J. Stilson Company, and the said Fielding J. Stilson Company, through its proper officers, thereupon represented to and assured said Wm. R. Staats Company that it, the said Fielding J. Stilson Company, was perfectly solvent, but that certain funds which it had expected to receive had been slightly delayed in receipt, and that for that reason it had not had sufficient funds on deposit to pay said check, and said Fielding J. Stilson Company then and there agreed that if said Wm. R. [28] Staats Company would not exercise its right to rescind said sale it, the said Fielding J. Stilson Company, would execute to said Wm. R. Staats Company, its note for said sum of three thousand eight hundred Seventy dollars (\$3,870), and to secure the same would execute a deed of trust on the property described in the copy of the deed of trust annexed to the bill of complaint herein. That in pursuance of said agreement, said Wm. R. Staats Company did refrain from exercising its said right to rescind such sale, and received and accepted from said Fielding J. Stil-

son Company its note for three thousand eight hundred seventy dollars (\$3,870.00), and the deed of trust a copy of which is annexed to the bill of complaint herein.

That in all of said transactions and dealings the said Wm. R. Staats Company acted in entire good faith, without any knowledge or information that said Fielding J. Stilson Company was insolvent; or any reasonable cause so to believe. These defendants aver that said note and deed of trust were given and received by said Wm. R. Staats Company for a present fair consideration passing from said Wm. R. Staats Company to said Fielding J. Stilson Company, as hereinbefore more fully set forth.

WHEREFORE, these defendants pray a decree that complainant take nothing by this action, that defendants have judgment against complainant for their costs herein incurred, and the defendants also pray for all further relief that may be meet and proper in the premises.

O'MELVENY, STEVENS & MILLIKIN,
WALTER K. TULLER,

Solicitors for said Defendants. [29]

United States of America,
Southern District of California,
Southern Division,
County of Los Angeles,—ss.

John Earle Jardine, being duly sworn, deposes and says: That he is an officer, to wit; the vice-president, of Wm. R. Staats Company, a corporation, one of the defendants in this action, and that he verifies this answer on behalf of both defendants herein; that

he has read the foregoing answer and knows the contents thereof, and that all the facts, matters and things stated in the foregoing answer are true of his own knowledge, except as to those therein stated on his information or belief, and that as to such matters he believes the same to be true.

JOHN EARLE JARDINE.

Subscribed and sworn to before me this 17th day of February, 1913.

[Seal]

F. P. HARRINGTON,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 235. In the District Court of the United States, in and for the Southern District of California, Southern Division. Security Trust & Savings Bank, Trustee, etc., vs. Wm. R. Staats Company et al. Answer to Bill of Complaint. Service accepted Feby. 18, 1913. W. T. Craig, Atty. for Complt. O'Melveny, Stevens & Millikin, Attorneys at Law, 419-437 Wilcox Building, 206 S. Spring St., Los Angeles, Cal. Filed Feb. 18, 1913. Wm. M. Van Dyke, Clerk. By Chas N. Williams, Deputy Clerk. [30]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 235.

SECURITY TRUST & SAVINGS BANK, a Cor-
poration, Trustee,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, et al.,
Defendants.

Notice of Motion to Refer to Special Master.

To the Defendants Herein and to Their Attorneys,
Messrs. O'Melveny, Stevens & Millikin:

YOU WILL PLEASE TAKE NOTICE that on
Monday, the 26th day of January, 1914, at 10:30
o'clock A. M., the complainant herein will move the
said Court at the courtroom of said court in the
Federal Building in the City of Los Angeles, County
of Los Angeles, State of California, to refer the is-
sues in the said action to a Special Master to take
the testimony therein and report the same with his
findings to the Judge of said court.

Said motion will be made upon the ground that the
said action is at issue and that exceptional condi-
tions require that the same be referred to a Special
Master.

Complainant will use upon the said motion the
papers and pleadings on file in said action, the affi-
davit attached hereto and marked exhibit "A" and
made a part hereof and this notice.

Dated January 20, 1914.

W. T. CRAIG and
CARROLL ALLEN,

Attorneys for Complainant. [31]

EXHIBIT "A."

*In the District Court of the United States, for the
Southern District of California, Southern Divi-
sion.*

No. 235.

SECURITY TRUST & SAVINGS BANK, a Cor-
poration, Trustee,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, et al.,
Defendants.

State of California,

County of Los Angeles,—ss.

W. T. Craig, being duly sworn, deposes and says:
That he is one of the attorneys for the complainant
in the above-entitled action; that said action is at
issue and ready for trial; that the same is an action
in equity to set aside a preference obtained from
Fielding J. Stilson Company, a bankrupt; that the
said action has been pending since January 22,
1913; that the estate of the said Fielding J.
Stilson Company cannot be closed until the final
determination of said action; that the state of the
calendar in said court is such that it is uncertain
when the said action can be tried or whether the
same can be tried during the year 1914 at all; that

it is necessary that the said matter be referred to a Special Master for the foregoing reasons.

W. T. CRAIG.

Subscribed and sworn to before me this 19th day of January, 1914.

[Seal]

OLIVE DIFFENDERFER,

Notary Public in and for the County of Los Angeles,
State of California. [32]

[Endorsed]: No. 235-Civil. In United States District Court, Southern District of California, Southern Division. Security Trust & Savings Bank, a Corporation, Trustee, Complainant, vs. Wm. R. Staats Company, a Corporation, et al., Defendants. Notice of Motion to Refer to Special Master. Received Copy of the Within Notice this 20th day of Jan. 1914. O'Melveny, Stevens & Millikin, Attorneys for Defts. William T. Craig and Carroll Allen, Equitable Savings Bank Building, Los Angeles, Cal., Attorneys for Complainant. Filed Jan. 20, 1914. Wm. M. Van Dyke, Clerk. By Chas N. Williams, Deputy Clerk. [33]

At a stated term, to wit, the January term, A. D., 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Thursday, the fifth day of March, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable FRANK H. RUDKIN, District Judge.

No. 235—CIVIL, S. D.

SECURITY TRUST & SAVINGS BANK, Trustee,
etc.,

Complainant,

vs.

WM. R. STAATS COMPANY et al.,

Defendants.

This cause coming on at this time to be heard on complainant's motion to refer said cause to a Special Master to be appointed therein; William T. Craig, Esq., appearing as counsel for complainant; Frank T. Rabe, Esq., appearing as counsel for defendants; and said motion having been argued, in support, thereof, by William T. Craig, Esq., of counsel for complainant, and in opposition thereto by Frank L. Rabe, Esq., of counsel for defendants; and said cause having been submitted to the Court for its consideration and decision on said motion and the oral argument thereof; it is now by the Court ordered that Lynn Helm, Esq., be and he hereby is appointed Special Master herein, to hear the issues raised by the bill of complaint and the answer of defendants, and report the same to this court, together with his findings of fact and conclusions of law thereon. [34]

[Report of Special Master.]

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

No. 235—CIVIL.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY, a Corporation,

Defendants.

To the Honorable Judges of the District Court of the
United States, for the Southern District of California:

I, Lynn Helm, Referee in Bankruptcy, by an order entered herein on the 5th day of March, 1914, to hear the issues raised by the bill of complaint and the answer of the defendants, and to report the same to this Court, together with my findings of fact and conclusions of law thereon, respectfully report that on the 23d, 27th and 28th days of April, 1915, I was attended by the Security Trust & Savings Bank, trustee in bankruptcy of Fielding J. Stilson Company, a Corporation, complainant, by W. T. Craig, Esq., and Carroll Allen, Esq., its attorneys, and by William R. Staats Company and the Title Insurance

& Trust Company, defendants, by their attorneys Messrs. O'Melveny, Stevens & Millikin, and Walter K. Tuller, Esq., and having heard the testimony produced on said hearing on behalf of the complainant and the defendants, the reporter's transcript of which is filed herein, no other testimony having been offered on said hearing, and having heard the argument of counsel and being fully advised in the premises, do find and report as follows: [35]

1. Fielding J. Stilson Company, a corporation organized under the laws of the State of California, was on the 24th day of October, 1912, adjudged a bankrupt, upon an involuntary petition filed in this court against said Fielding J. Stilson Company on the 2d day of July, 1912. It was alleged in said involuntary petition of the creditors of said Fielding J. Stilson Company that at the time of the filing of the petition in bankruptcy said Fielding J. Stilson Company was insolvent and that within four months next immediately preceding the date of the filing of the petition in bankruptcy the said Fielding J. Stilson Company committed an act of bankruptcy in that it did on or about the 14th day of March, 1912, while it was insolvent, convey and transfer certain of its property, to wit, lot 17 of block 9 of Angeleno Heights, in the City and County of Los Angeles, State of California, to said William R. Staats Company, with intent then and there to hinder and delay the creditors of said Fielding J. Stilson Company; and also that within four months next immediately preceding the filing of the petition in bankruptcy the said Fielding J. Stilson Company

committed an act of bankruptcy in that on or about the 14th day of March, 1912, while it was insolvent, it conveyed and transferred certain property, to wit, lot 17 in block 9 of Angeleno Heights aforesaid, to said Williams R. Staats Company, who was then and there a creditor of said Fielding J. Stilson Company, with intent then and there to prefer the said William R. Staats Company over the other creditors of said bankrupt and that the effect of said conveyance then and there was to secure the said Wm. R. Staats Company and to enable it to receive a greater percentage of its indebtedness than any other creditors of said bankrupt of the same class.

Upon the filing of the petition in involuntary bankruptcy [36] aforesaid the service of a writ of subpoena was made upon the Fielding J. Stilson Company, returnable as required by law and within five days after the return day of said subpoena and to wit, on the 27th day of July, 1912, the said bankrupt appeared and filed a demurrer and answer to said petition, but within said five days after said return day no petition or answer was filed by the William R. Staats as a creditor of said bankrupt, or by any other creditors of said bankrupt. Thereafter said petition and the issue made by the answer of said bankrupt was referred to the undersigned as Special Master, and on the 9th day of October, 1912, a Special Master's Report was filed herein, wherein among other things it was found that on the 15th of March, 1912, said bankrupt Fielding J. Stilson Company was indebted in upwards of the sum of \$250,000 and nearly \$260,000 in liabilities, and that

said Fielding J. Stilson Company at that time had assets consisting of stocks, bonds, bills receivable and accounts receivable, and real estate, which did not aggregate in value more than the sum of \$215,-911.23; and that the said Fielding J. Stilson Company committed an act of bankruptcy in that it did on the 19th day of March, 1912, when insolvent, convey and transfer certain of its property, to wit, lot 17 in block 9 of Angeleno Heights aforesaid, to said William R. Staats Company, being then a creditor of said Fielding J. Stilson Company, and said conveyance being made with intent then and there to prefer said William R. Staats Company over its other creditors, including said petitioners, the effect of said transfer being then and there to enable the said William R. Staats Company to receive payment of a greater percentage of its debt than any other unsecured creditor of said bankrupt.

Upon the coming in of this Master's report the said report was confirmed and *the* on the 24th of October, 1912, said [37] bankrupt was duly adjudged a bankrupt as aforesaid. The schedules in bankruptcy were filed herein by said bankrupt on the 27th day of November, 1912.

It appears from the evidence herein that the alleged transfer by the said bankrupt of its property to the Title Insurance & Trust Company, for the benefit of said William R. Staats Company, was made on the 19th day of March, 1912, conveying said lot 17, block 9, and other lots in Angeleno Heights therein described, and that subsequent to, that date the said bankrupt transacted no business,

incurred no further liabilities and acquired no assets, and that its condition was the same between the 19th day of March, 1912, and the date of the filing of the schedules herein on the 27th day of November, 1912.

The liabilities of said bankrupt on the 19th day of March, 1912, were between \$250,000 and \$260,000; in fact they are shown by the schedules to be \$257,760.87. The assets of said corporation, consisting of stocks, bonds, bills receivable and accounts receivable, as scheduled, taken at a fair valuation, did not exceed in value on the 19th of March, 1912, the sum of \$247,977.79. In fact from the testimony now presented to me, I find said assets were of the value of \$202,302.79. I therefore find that the said bankrupt was on the 19th of March, 1912, at the time of the giving of the alleged preference, insolvent.

2. I am further impelled to this conclusion because I am of the opinion that the creditors of said bankrupt, which includes the William R. Staats Company, the defendant herein, were parties to the proceeding to have said bankrupt so adjudged, and are precluded by the order of adjudication in so far at least as the adjudication determines the insolvency of the debtor, and that it committed an act of bankruptcy within four months of the filing of the petition in bankruptcy. In the proceeding to have Fielding J. Stilson Company adjudged a bankrupt two of the essentials [38] to be determined were the insolvency of the debtor and the fact that it had within four months of the filing of the petition, to wit, on the 19th of March, 1912, committed an act of bankruptcy, in that it did make a transfer of its

property to William R. Staats Company with intent on its part to create a preference, the effect of which transfer was to give said William R. Staats Company a greater percentage of its claim than other creditors of the same class.

In *Cook v. Robinson*, 28 A. B. R. 182, 187, 194 Fed. 753, the Court said:

"Now, the creditors of the bankrupt became parties to the proceeding to have him so adjudged and are precluded by the order of adjudication in so far at least as the adjudication determines the insolvency of the debtor, and that he has committed an act of bankruptcy within four months of the filing of the petition. In *Bear v. Chase*, 3 Am. B. R. 746, 99 Fed. 920, 924, 40 C. C. A. 182, 186, a case bearing near analogy upon the facts to the case at bar, the Circuit Court of Appeals for the Fourth Circuit expressly held that:

'Upon the adjudication of the bankrupt, all creditors became parties to the bankruptcy proceedings by operation of law, and particularly these creditors by whose acts the bankruptcy was caused.'

Here, as there, the person running the attachment is a creditor of the bankrupt, and it was he who through the attachment precipitated the proceeding in bankruptcy. So in *Hackney v. Hargreaves Bros.*, 13 Am. B. R. 164, 170, 68 Neb. 624, 99 N. W. 675, which was a contest between a trustee in bankruptcy and one sought to be charged as a creditor having received unlawful

preference, the Court gave a like rendering of the law, as follows: [39]

'The defendants in the action are not third parties in the sense that they are in no wise connected with the bankruptcy proceedings, because, for the purpose of these controversies, and in determining their liability, they are sought to be charged as creditors of the bankrupt having received unlawful preferences, and for such purposes were necessarily parties to the bankruptcy proceedings.'

Being parties to the bankruptcy proceeding, it must follow that the creditors are precluded by the adjudication upon such issues as must necessarily be determined in order to pass judgment; otherwise there would be no end to controversy as to these matters, as every creditor would claim the right to be heard by independent suit. As was said in *Re American Brewing Co.* (C. C. A., 7th Cir.), 7 Am. B. R. 463, 470, 112 Fed. 752-758, 50 C. C. A. 517, 523:

'If it were necessary, in order to bind creditors by a judgment in bankruptcy, that they should appear and answer, as they always have a right to do, then an adjudication could be prevented simply by creditors abstaining from appearing in the proceedings. But it is well settled that the proceedings are in a large sense *in rem*, and are binding whether the bankrupt or creditors appear or not.'

And it has been held that the adjudication in bankruptcy, until avoided by direct proceeding,

is as binding and conclusive upon the bankrupt and the creditors as much so as a judgment *inter partes* on due hearing in a court of competent jurisdiction. 164 Fed. 823-825, 90 C. C. A. 627. See, also, *In re First National Bank* (C. C. A., 8th Cir.), 18 Am. B. R. 265, 152 Fed. 64-70, 81 C. C. A. 260."

To the same effect is *Lazarus vs. Eagan*, 30 A. B. R., 287, 206 Fed. 518. The Court said: [40]

"The decree of this court put in evidence adjudicating on the 28th of December, 1911, W. J. Greggs, a bankrupt, conclusively established the fact at issue, as alleged in the petition, that Greggs was insolvent when he transferred his property to his wife and afterwards to Eagan. Any other holding would lead to endless confusion in the administration of the law, and would in many cases, nullify one of the principal purposes of the Bankruptcy Act, as was said in *DeGroff v. Sang*, 92 App. Div. (N. Y.) 564; s. c., 87 N. Y. 78. And it matters not that Eagan was actually without notice of these proceedings. An adjudication being an adjudication *in rem*, all persons interested in the *res* are regarded as parties to the bankruptcy proceedings. Among such parties are not only the trustees but all creditors, including lienors, *Chapman v. Brewer*, 114 U. S. 169; *Carter v. Hobbs* (D. C., Ind.) 1 Am. B. R. 215, 92 Fed. 594; *In re Ulfelder Clothing Co.* (D. C., Cal.), 3 Am. B. R. 425, 98 Fed. 409."

There is nothing contrary to this view in the case of Shepherd-Strassheim Co. vs. Black, 33 A. B. R., 574. Even in that case it is recognized that the decree of adjudication might be conclusive upon the separate question of insolvency even if it was not conclusive upon the question of whether the defendant had a right to retain the security which he received which was alleged to be a preference, as that was not presented by the petition for adjudication in bankruptcy, nor adjudicated therein. To the same effect is Hussey vs. Richardson-Roberts Dry Goods Co., 17 A. B. R., 511.

The decision in Cook vs. Robinson, *supra*, is controlling upon this court in this matter and it must be held that the question of insolvency of this bankrupt At the date of the giving of this preference is *res adjudicata*. I therefore find that said bankrupt was insolvent on March 19, 1912, at the date of the giving of the security in question to the defendant. [41]

3. It is contended on behalf of the defendant that in this transaction there was no diminution of the bankrupt's assets by reason of the security given to the defendant and that therefore the effect of the transfer by the bankrupt to the Title Insurance & Trust Co. for the benefit of William R. Staats Company did not enable said William R. Staats Company to obtain a greater percentage of its debt than any other creditors of the same class; and it is further contended that the entire transaction between William R. Staats Company and the bankrupt should be regarded as one transaction and that the making of the transfer was not for the purpose of securing

an antecedent debt of the bankrupt to said defendant but was given for a present fair consideration.

The bankrupt and the defendant William R. Staats Company were brokers, dealing in stocks, bonds and other securities and each of them were represented upon the Los Angeles Stock Exchange. On the 15th of March, 1912, the bankrupt in due course of business purchased of the defendant William R. Staats Company 200 shares of Amalgamated Oil Company at \$64.50 per share. The defendant William R. Staats Company delivered certificates representing 60 shares and gave a due bill for 140 shares for subsequent delivery. The sale was a cash transaction and the bankrupt gave its check to William R. Staats Company on that date, payable at the Citizens National Bank of Los Angeles, for \$12,900, the cash value of the stock purchased. This check, on presentation to the Citizens' National Bank was dishonored and rejected for want of funds. Immediately on the rejection of the check on the 16th of March, John A. Jardine, an officer of the William R. Staats Company, telephoned Fielding J. Stilson, the President of the bankrupt corporation, in reference to this check and its rejection and was advised by him that the check would be made good and for him to put it through the bank again the following [42] banking day. It was put through on the following Monday, the 18th of March, but was again rejected for want of funds. Again Stilson asked Jardine to put the check through the bank a third time and it was again rejected for want of funds. Stilson then told Jardine that he was making disposition of some

property and expected a payment of \$10,000, and that he would protect William R. Staats Company. On the following day, the 19th, Stilson advised Mr. Jardine that he could not meet the payment, that the deal from which he expected funds was not consummated but that the Fielding J. Stilson Company had some real estate and would give them security thereon. Thereupon one of the defendant's employees went with Mr. Stilson to examine the property offered as security, which Stilson estimated was on the value of \$25,000, and it was accepted and a trust deed was given that afternoon to the Title Insurance & Trust Company, for the benefit of William R. Staats Company, to secure it in the sum of \$3,870, the value of the 60 shares of stock of the Amalgamated Oil Company, sold and delivered to the bankrupt as aforesaid, and was placed of record on the following morning, March 20, 1912, at 9 o'clock A. M. That morning the bankrupt suspended and has transacted no business since that day.

It is contended on behalf of the defendant William R. Staats Company, that the transaction between it and the bankrupt was a cash transaction; that upon the failure of the bankrupt to pay its check, which was given for the stock received, that the defendant William R. Staats Company had a right of rescission and that the waiver of this right of rescission was a present consideration for the taking of the transfer from the defendant, and that the transfer was in fact only security for a then present loan.

These contentions of the defendant cannot be upheld for it cannot be said that this transfer was not

a diminution of the [43] bankrupt's estate, nor that the transaction should be regarded as instantaneous and one. The right of rescission on the part of the defendant William R. Staats Company, with the right to the return to it of the certificates for the 60 shares of stock which it had on the 15th of March, 1912, delivered to the bankrupt, is predicated upon either that the seller retains the stock sold, or the ability on the part of the bankrupt to return the 60 shares of stock, otherwise William R. Staats Company would only have a general claim against the Fielding J. Stilson Company for the value of the stock and it would in effect to that extent be a general creditor of the bankrupt.

Otherwise also, the right of rescission would not be an asset in the hands of William R. Staats Company but would result in a lawsuit which might inevitably be a liability.

There is no testimony in this case that at any time after the 15th of March, 1912, Fielding J. Stilson Company had undisposed of 60 shares of stock which it received from William R. Staats Company on that date, but on the contrary there is positive testimony that the due bill for 140 shares of stock and the other 60 shares, immediately on its receipt had been hypothecated by the Fielding J. Stilson Company, so that if William R. Staats Company had attempted to rescind it would not have been in any position to have reacquired the stock which it sold and delivered to the bankrupt.

William R. Staats Company consented to give the Fielding J. Stilson Company time to obtain the

money from other sources and retained no lien upon the stock which it had sold it. Its consent in this respect, even if not intended to have that effect, broke the continuity of the transaction and made the stock or its proceeds part of the general assets of the bankrupt's estate. [44]

This is not like the case of *Grey vs. Dockendorff*, 231 U. S., 513, wherein is appeared that the bankrupt, which was engaged as a cotton converter, in order to enable it to manufacture and sell its product agreed to assign within seven days after shipments, the accounts receiveable of credit sales made by it, and upon that security Dockendorff agreed to lend 80% of the net face value of such accounts as he should approve, less commissions and discounts up to \$175,000. Dockendorff's lien was to be for all sums due and to cover all accounts but he was not bound to lend on accounts not approved by him. It was found that neither petitioner nor the bankrupt knew that the latter was insolvent at the time of the supposed preference, and that the transfers were not made with intent to defraud creditors. The question presented was whether successive assignments of accounts by way of security in pursuance of a contract under which advances were made to enable the assignor to get the goods, on the faith of the undertaking that the accounts should be assigned, were bad because the contract embraced all accounts, although neither party contemplated any fraud.

The Supreme Court said:

"The advances were the means by which the bankrupt got the ownership of the goods. The

contract of itself would operate as a conveyance as soon as the rights to which it applied were acquired. *Field v. New York*, 6 N. Y. 179. We do not see why in the interval between the acquisition of the goods and the specific assignment of accounts, the right of general creditors without lien should intervene to defeat a security given in good faith, when, but for the promise of it, the property never would have come into the bankrupt's hands. There may have been a moment when the goods could have been attached, or when, if insolvency had been made known, as in *National City Bank v.* [45] *Hotchkiss, ante*, p. 50, it would have been too late to make the promised lien good. But in this case, the lien was acquired before any knowledge of insolvency, and before any attachment intervened."

This case is more like *National City Bank vs. Hotchkiss*, 231 U. S. 50. That case arose upon what is known in New York as a clearance loan. Brokers need large sums to clear or pay for the stocks that they receive in the course of the day, and as the stocks must be paid for before they are received and can be pledged to raise the necessary funds, these sums are advanced by the banks. They are returned later on the same day by making deposits to the borrower's account and drawing a check to the order of the bank. If a lien could have been on the loan or its proceeds until payment, such a lien is rarely created, as the whole business is to be finished within a few hours. The bankrupts were brokers, in partnership, and at 10 o'clock of January 19, 1910, had assets exceeding

their liabilities by nearly half a million dollars, consisting largely of a coal and iron company in which there was a pool. Before twelve, there was a break in the market, the stock went down and at about noon the suspension of the firm was announced. A petition in involuntary bankruptcy was filed at ten minutes after four on the same day. At about ten, the bank made a clearance loan to the bankrupts of \$500,000, in the usual way, to enable them to meet their current obligations and to get the stocks deliverable on that day, the bank receiving demand notes, both parties acting in good faith. By consent of the bank the loan was put into the general deposit account, which was drawn upon for general purposes, at least to the extent of the balance above the loan, and the securities released were not kept separate, but were used like any others. All moneys received in the course of the day [46] from whatever source, went into the firm's deposit account with the bank.

The Supreme Court said:

"As all trace of the bank's money was lost when it entered the stream of the firm's general property there can be no right of subrogation. Neither can a claim be upheld on the ground that there was no diminution of the bankrupt's assets, or that the transaction should be regarded as instantaneous and one. The consent to become a general creditor for an hour, that was imported, even if not intended to have that effect, by the liberty allowed to the firm, broke the continuity and established the loan as part of the assets. No doubt many general creditors have in-

creased a bankrupt's estate by their advances, but they have lost the right to take them back. Time sometimes can be disregarded when it is insignificant. But in this case half the time between the loan and the transfer of securities sufficed to change the positions of the borrowers from a fortune of half a million to a deficit of double that amount."

Nor can it be said that this case is within the line of the authorities which have to do with the incurring of running transactions and accounts between parties, wherein even after a creditor has been preferred, he in good faith gives the debtor further credit without security of any kind, for property which becomes a part of the debtor's estate. The amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him. Such is the case of *Wild vs. Provident Trust Co.*, 214 U. S. 292, wherein it was stated that the decision of the Court in all cases having therein this principle is based upon the broad principle that the dealings between creditors and the bankrupt after the bankrupt's insolvency, [47] where the net effect was to enrich the bankrupt's estate by the total sales, less the total payments, were not preferences. It assumes that by the subsequent dealings of the creditor with the bankrupt that the estate is unimpaired, for the property of the creditor getting into the debtor's estate is presumably the equivalent of the money value at which it was purchased. It in substance simply cancels the effect of the preference to the ex-

tent only that such preference no longer harms the interest of the other creditors. (Peterson vs. Nash Bros., 112 Fed., 311, 7 A. B. R., 181; McKey vs. Lee, 5 A. B. R. 267, 105 Fed., 323.) In this class of cases the courts have used the expression that the running account of mutual sales and payments at short intervals should be treated as one transaction so that it should not be held that the effect of the payments was to enable creditors receiving payments to receive a greater percentage of their debts than other creditors of the same class. (In re Saeger Bros., 121 Fed., 558, 9 A. B. R., 361.)

The case at bar, however, cannot be regarded as an instantaneous and one transaction. The continuity of the transaction was broken when the defendant William R. Staats Company agreed to wait for its money, and put the check through the second time and third time, and when it afterwards agreed to wait for the bankrupt to obtain funds from another deal or from other property, and when in fact it allowed the stock which it sold to the bankrupt to so far pass out of its hands that it could not reach forth and obtain it upon any rescission of the transaction. Thereafter it became a general creditor of the bankrupt. No doubt by its selling the stock to the Fielding J. Stilson Company it increased its estate, but so have many general creditors by their advances or transactions with the bankrupt. While the [48] defendant may have taken the mortgage in lieu of cash it was the security for an antecedent indebtedness absolutely due and owing from the Fielding J. Stilson Company to the defendant prior to the giving of the security.

The defendants have termed the giving of the security by the Fielding J. Stilson Company to defendant William R. Staats Company, as the making of a loan by said defendant to said bankrupt, but this transaction cannot be determined as a loan. A loan presupposes a new and present advancement to the borrower. It means the advancement of ready funds or property whereby the estate of the bankrupt would be increased at that time to the amount of the loan or to the amount of the actual cash advanced at that time. A loan is not the security or payment of an antecedent indebtedness as was the condition here presented. Property transferred by a borrower at the time of receiving a loan and for the purpose of making the lender safe is security for the then present indebtedness incurred and such would be recognized and enforced in bankruptcy, but security given for an antecedent indebtedness by an insolvent debtor, the effect of which is to give the creditor a greater percentage of its claim than other creditors of the same class, is a preference.

The giving of this security by the defendant when it was insolvent, as security for an antecedent indebtedness, due by it, had necessarily the effect of giving the defendant the William R. Staats Company, a greater percentage of its claim against the bankrupt than other creditors of the same class, and it must therefore be held that the bankrupt gave a preference by the giving of said security to said defendant.

4. It is further claimed on the part of the defendant, that the defendant William R. Staats Company when it received the security above described from

the bankrupt, did not have reasonable cause to believe that it was intended thereby to give a preference.
[49]

The circumstances surrounding this transaction have been as above related. The testimony further shows that when it was discovered that the check of the Fielding J. Stilson Company for \$12,900 given to the defendants William R. Staats Company, on the 19th day of March, 1912, had been refused payment for want of funds, that Stilson at first assured Mr. Jardine that this check would be paid and for him to put the check through the next day; that the next day the check was again put through the bank, even twice at Stilson's request, and each time returned rejected for want of funds, and at that time Mr. Stilson told Mr. Jardine that they had other checks amounting to \$8,000. that had met with the same fate and which were outstanding, but that they would take care of William R. Staats Company and see that they were protected. Mr. Jardine does not contradict this statement except by his statement that he has no recollection that Mr. Stilson so told him, and I must therefore find that the defendant William R. Staats Company not only knew that the check given them had been rejected but that they had notice that other checks of the bankrupt were outstanding which had been rejected for the same reason of want of funds. These circumstances were sufficient to put a reasonably prudent man upon inquiry.

If the circumstances are such as would lead an ordinarily prudent man of affairs to the conclusion that his debtor is insolvent, he obtains a preferential pay-

ment within the meaning of the statute, by accepting payment in whole or in part of the debt, where the transaction takes place within four months prior to adjudication and other creditors of the same class, because of the greater percentage received, must accept increased dividends. (*Rogers vs. Halibut Co.*, 31 A. B. R. 576.) It is enough to constitute a reasonable cause to believe a debtor insolvent, that the facts and circumstances with reference to [50] the debtor's financial condition which are brought home to the creditor are such as would put an ordinarily prudent man upon inquiry, which if pursued, would lead to knowledge of insolvency. (*Bardes vs. First National Bank of Hawarden*, 11 A. B. R. 771, 122 Iowa, 443.) Reasonable cause to believe that it was intended to give a preference does not require proof that the defendant had either actual knowledge or actual belief, but only such surrounding circumstances as would lead an ordinarily prudent business man to conclude such a preference was intended. (*Sundheim vs. Ridge Avenue Bank*, 15 A. B. R., 132-134, 138 Fed. 951.) Circumstances such as these were held sufficient to put a reasonably prudent man upon inquiry to ascertain the financial condition of the debtor, in *Mechanics' Bank vs. Ernst*, 231 U. S. 60, and in *R. H. Herron Co. vs. William H. Moore*, 31 A. B. R., 221; *In re Dorr*, 25 A. B. R. 505, 196 Fed. 292; *In re Thomas Deutschle & Co.*, 25 A. B. R., 348, 182 Fed. 435. See, also, 2 Remington on Bankruptcy, Section 1396, and cases cited.

It is not a sufficient answer to this proposition to say that Mr. Stilson told Mr. Jardine that the bank-

rupt concern was solvent, or that Stilson Company had previously had checks carried for a day or two and afterwards paid, or that they bore an excellent reputation. This case is brought within the statute by holding that the defendants had constructive knowledge of what they would have ascertained had they inquired and the effect of constructive knowledge is the same always as actual knowledge. (Ogden vs. Reddish, 29 A. B. R. 531, 200 Fed. 977.)

I therefore find that said bankrupt having given a preference, that William R. Staats Company receiving the same and having benefited thereby, had reasonable cause to believe that it was intended by the giving of said security to give a preference and that the said trust deed so given is voidable at the instance of the trustee in bankruptcy. [51]

5. Wherefore, as conclusions from the foregoing, I do find that said bankrupt within four months of the filing of the petition, made a transfer of its property, to wit, the execution and delivery unto the defendant, the Title Insurance & Trust Company of a deed of trust, a copy of which is attached to the complaint herein, and which deed of trust was executed and acknowledged and recorded in the office of the county recorder of Los Angeles County, California, on the 20th day of March, 1912, in book 4924, page 186 of deeds of Los Angeles County Records, and was made and received as security for an indebtedness amounting to \$3,870.00, then due the defendant William R. Staats Company from the said bankrupt and that the effect of the enforcement of such transfer was to enable the said defendant William

R. Staats Company to obtain a greater percentage of its debt than other creditors of the said bankrupt of the same class, and that the said defendant William R. Staats Company at the time of the receiving of said transfer having had reasonable cause to believe that it was intended thereby to give a preference, that said transfer is voidable by the trustee herein and should be set aside, cancelled and annulled.

I return herewith the reporter's transcript of the testimony taken on this hearing, together with the exhibits therein referred to, and also return the files and papers in said cause.

Inasmuch as this is a special reference, referred to me as Special Master, and not a matter pertaining to my duties as referee in bankruptcy, a reasonable allowance should be made for Master's fees in this proceeding.

Respectfully submitted,

LYNN HELM,
Special Master.

Master's fees, \$——.

Reporter's fees, \$74.00. [52]

[Endorsed]: No. 235—Civil. In the United States District Court, Southern District of California, Southern Division. In the Matter of Fielding J. Stilson Company, Bankrupt. Special Master's Report. Filed Jun. 17, 1915, at 30 min. past 9 o'clock A. M. Lynn Helm, Referee. C. Meade, Clerk. Lynn Helm, 918 Title Insurance Building, Los Angeles, Cal. Filed June 18, 1915. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [53]

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

No. 235—CIVIL.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of FIELD-
ING J. STILSON COMPANY, a Corporation,
Bankrupt,

Complainant.

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COM-
PANY, a Corporation,

Defendants.

Exceptions to Report of Special Master.

To the Honorable Judges of the United States District Court, Southern District of California:

NOW COME Wm. R. Staats Company and Title Insurance & Trust Company, defendants in the above-entitled action, and except both generally and specially to the report of Lynn Helm, Esquire, the Special Master, filed in this cause on or about the 17th day of June, 1915, and for cause of exception show:

First. That said cause was improperly and erroneously referred to said Special Master over the objection of these defendants.

Second. That the Master has in said report stated and certified that the Deed of Trust therein referred to constituted and amounted to a preference, and

that the effect of the enforcement of such answer was and is to enable defendant Wm. R. Staats Company to obtain a greater percentage of its debt than other creditors of said bankrupt of the same class, and was and is voidable at the option of the trustee in bankruptcy, whereas, he should have found that the same did not constitute a preference, [54] and that the effect of the enforcement of such transfer was not and would not be to enable said defendant Wm. R. Staats Company to obtain a greater percentage of its debt than other creditors of said bankrupt of the same class, and that the said deed of trust is not voidable at the option of said trustee in bankruptcy or at all, but is valid.

Third. The Master has found and determined that the said deed of trust was executed to secure an antecedent indebtedness, and that the transaction between said Fielding J. Stilson Company and said Wm. R. Staats Company was not a single transaction, whereas, he should have found and held that said deed of trust was given for a present valuable and fair consideration, and that said transaction between said bankrupt corporation and said Wm. R. Staats Company should be treated and held as one transaction.

Fourth. Said Master has found that said Fielding J. Stilson Company was at the time of giving the alleged preference insolvent, whereas, he should have found that said company was at said time solvent.

Fifth. In that the Master states that there is positive evidence that the 60 shares of stock therein referred to had been hypothecated by the bankrupt cor-

poration prior to the execution of said deed of trust, whereas the testimony does not justify such statement, conclusion or finding, nor does the record show that if said shares of stock or any of them, or the due bill for 140 shares of stock had been hypothecated prior to said time they were hypothecated to a bona fide purchaser for value and without notice.

Sixth. In that the Master has found that the effect of said deed of trust will be to enable defendant Wm. R. Staats Company to get a greater percentage of its claim than other creditors of the same class, whereas, the evidence does not justify such a finding or conclusion. [55]

Seventh. In that the Master has found that defendant Wm. R. Staats Company at the time of the execution of said deed of trust had reasonable cause to believe that preference was thereby intended, whereas, the evidence does not justify such finding or conclusion.

Eighth. That the Master should have found and recommended that a decree be entered dismissing the bill with costs to the defendants.

Ninth. That the Master erred in each and every of the following rulings on evidence: (The reference being to the page of the reporter's transcript of the evidence on which such matters are found.)

In overruling defendants' objection to the offer of petition in bankruptcy, the report of the Special Master, the order confirming the report of the Special Master, and the order of adjudication (page 2).

In overruling defendants' objection to the question, "Do the schedules correctly state your liability

ties as to the time they were filed? (Page 5.)

In overruling defendants' objection to the question, "Was there any change in the assets and liabilities of the Fielding J. Stilson Company, a bankrupt, between the 19th day of March, 1913, and the date of filing of schedules in bankruptcy?" (Pages 9 and 10.)

In overruling defendants' objection to the question, "You didn't incur any liabilities, that is the corporation didn't incur any liabilities, after the 19th day of March?" (Page 12.)

In admitting the schedules in bankruptcy over defendants' objection. (Page 13.) And

In overruling defendants' objection and motion to strike out the schedule in bankruptcy. (Page 14.)

In overruling defendants' objection to the question, "Explain these items and state what the value of each one of them was at that time, and state the reasons why you so state." [56] (Page 17.) And similar questions calling for witness's opinion as to the value of the various items listed in said schedule.

In overruling defendants' objection to the question, "Was that claim of \$11,000 due to the Fielding J. Stilson Company collectible, and if so, in what manner?" (Page 22.)

In overruling defendants' objection to the question, "What was the value of the indebtedness?" (Page 22.)

In overruling defendants' objection to the question, "Will you kindly go through this list—chooses in action, debts due petitioner on open accounts, and

state what the value was of each of these up to or on March 19th, 1912, and at any time subsequent to that time?" (Page 23.) And similar questions along the same line.

In overruling defendants' objection to the question, "Mr. Stilson, I will now renew the question which was asked of you at the last hearing, and will ask you whether the schedules in bankruptcy filed herein actually schedule the amount of the indebtedness of the Fielding J. Stilson Company at the time the schedules were filed on the 27th day of November, 1912"? (Page 33.) And succeeding questions subject to some objection.

In denying defendant's motion to strike out the testimony of witness, J. A. Craig. (Page 73.)

In sustaining plaintiffs' objection to the question, "I will ask you if you had ever had any conversations or made any inquiries of anyone prior to this time as to the financial condition of the Fielding J. Stilson Company, and if so state of whom you inquired and when?" (Page 83.)

In sustaining plaintiffs' objection to the question, to Witness Jardine—"I will ask you what was the reputation of the Fielding J. Stilson Company on the Stock Exchange and in financial circles, as to its financial responsibility." (Page 85.) [57]

In sustaining plaintiff's objection to the questions asked of witness Jardine (page 85), "Now, at the time you took this deed of trust, or at any time prior to this, did you know that the Stilson Company was insolvent?" And, "Did you find it to be insolvent?"

WHEREFORE, defendants pray that these ex-

ceptions be sustained, and a decree entered dismissing said bill with costs to defendants.

O'MELVENY, STEVENS & MILLIKIN,
WALTER K. TULLER,

Solicitors for Defendants.

[Endorsed]: (Original.) No. 235—Civil. In the United States District Court, in and for the Southern District of California, Southern Division. Security Trust & Savings Bank, a Corporation, Trustee in Bankruptcy of Fielding J. Stilson Company, a Corp., Bankrupt, Complainant, vs. Wm. R. Staats Company, a Corporation, and Title Insurance & Trust Company, a Corp., Defendants. Exceptions to Report of Special Master. Received Copy of the Within this 28th day of June, 1915. W. T. Craig, Attorney for Complainant. O'Melveny, Stevens & Millikin, Suite 825, Title Insurance Bldg., N. E. Corner Fifth & Spring Sts., Los Angeles, Cal., Attorneys for Defendants. Filed Jun. 30, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.
[58]

[Order Overruling Exceptions 1-4 and Sustaining Exceptions 2, 3, 5, 6, 7 and 8, and Dismissing Bill of Complaint.]

At a stated term, to wit, the July term, A. D. 1915, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Friday, the sixteenth day of July, in the year of

our Lord, one thousand nine hundred and fifteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 235—CIVIL, S. D.

SECURITY TRUST AND SAVINGS BANK, as
Trustee, etc.,

Complainant,

VS .

WILLIAM R. STAATS COMPANY et al.,

Defendants.

This cause coming on this day to be heard on exceptions to the report of the Special Master; W. T. Craig, Esq., appearing as counsel for complainant; Walter K. Tuller, Esq., appearing as counsel for defendants; and an opening statement having been made by Walter K. Tuller, Esq., of counsel for defendants, who also reads to the Court said report of Special Master; and said exceptions having been argued, in support thereof, by Walter K. Tuller, Esq., of counsel for defendants, and in opposition thereto by W. T. Craig, Esq., of counsel for complainant; and said cause having been submitted to the Court for its consideration and decision on said exceptions and the argument thereof; it is now by the Court ordered that exceptions numbers 1 and 4 be, and they hereby are overruled, and that exceptions numbers 2, 3, 5, 6, 7 and 8 be, and they hereby are sustained, the Court withholding ruling on exception number 9; and it is further ordered that the bill of complaint herein be dismissed, a decree accord-

ingly to be hereafter presented for action by the Court. [59]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 235.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, et al.,
Defendants.

Decree

THIS CAUSE came on to be heard at this term and was argued by counsel. Thereupon, upon consideration thereof, it was ORDERED, ADJUDGED and DECREED, as follows, viz.:

THAT the complainant's bill of complaint be and the same is hereby dismissed, and that defendants do have and recover from complainant the sum of Fifty 80/100 (\$50.80) Dollars, being defendants' proper and necessary costs and disbursements herein.

OSCAR A. TRIPPET,

Judge.

Dated July 20, 1915.

Decree entered and recorded July 20, 1915.

WM. M. VAN DYKE,

Clerk.

By Leslie S. Colyer,

Deputy Clerk. [60]

[Endorsed]: (Original.) No. 235. In the United States District Court, in and for the Southern District of California, Southern Division. Security Tr. and Sav. Bank, a Corporation, Trustee, Complainant, vs. Wm. R. Staats Company, a Corporation et al., Defendants. Decree. Filed Jul. 20, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. O'Melveny, Stevens & Millikin, Suite 825 Title Insurance Bldg., N. E. Corner Fifth and Spring Sts., Los Angeles, Cal., Attorneys for Defendants. [61]

Summary of Debts and Assets [In Re Stilson, Bankrupt].

SUMMARY OF DEBTS AND ASSETS.

(From the Statements of the Bankrupt in Schedules "A" and "B.")

Schedule A.... 1	(1) Taxes and Debts due United States.....	
Schedule A.... 1	(2) Taxes due States, Counties, Districts and Municipalities	117.50
Schedule A.... 1	(3) Wages	
Schedule A.... 1	(4) Other debts preferred by law.....	
Schedule A.... 2	Secured claims	125,167.25
Schedule A.... 3	Unsecured claims	117,176.12
Schedule A.... 4	Notes and bills which ought to be paid by other parties thereto	
Schedule A.... 5	Accommodation paper	15,300.00
	Schedule A, total	257,760.87
Schedule B.... 1	Real Estate	227,520.00
Schedule B.... 2-a	Cash on hand	
Schedule B.... 2-b	Bills, promissory notes and securities....	23,902.54
Schedule B.... 2-c	Stock in trade.....	
Schedule B.... 2-d	Household goods, etc.,.....	
Schedule B.... 2-e	Books, prints and pictures.....	
Schedule B.... 2-f	Horses, cows and other animals.....	
Schedule B.... 2-g	Carrriages and other vehicles.....	
Schedule B.... 2-h	Farming stock and implements.....	

Security Trust and Savings Bank

Schedule B.... 2-i	Shipping and shares in vessels.....	
Schedule B.... 2-k	Machinery, tools, etc.	1,185.63
Schedule B.... 2-l	Patents, copyrights and trademarks.....	
Schedule B.... 2-m	Other personal property.....	2,433.88
Schedule B.... 3-a	Debts due on open account.....	13,949.03
Schedule B.... 3-b	Stocks, negotiable bonds, etc.	10,895.00
[62]		
Schedule B.... 3-c	Policies of insurance.....	500.00
Schedule B.... 3-d	Unliquidated claims	
Schedule B.... 3-e	Deposits of money in banks and elsewhere	11.48
Schedule B.... 4	Property in reversion, remainder, trust, etc.	
Schedule B.... 5	Property claimed to be excepted.....	
Schedule B.... 6	Books, deeds and papers.....	
	Schedule B. total	280,298.11

FIELDING J. STILSON COMPANY,

By FIELDING J. STILSON,

Pres. Bankrupt. [63]

**Schedule "A"—Statement of All Debts of Bankrupt
[In Re Stilson, Bankrupt].**

SCHEDULE A. (1)

**Statement of All Creditors Who are to be Paid in
Full or to Whom PRIORITY IS SECURED by
Law.**

Dollars, Cents.

(1) Taxes and debts due and owing to the United States. Claims which have priority.

Reference to Ledger or Voucher,—Names of Creditors.—Residence (if unknown, that fact to be stated). Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom. **NONE.**

(2) Taxes due and owing to the State of

California or to any County, district or municipality thereof.

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated). Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so with whom.

Corporation Tax, due the State of California, with penalty.....	60.00
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State Franchise Tax, and penalty.....	57.50
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State and County Taxes for the last half of 1911-1912 and for 1912-1913 are unpaid on all real property described in Schedule B (1), the exact amount of which is unknown to affiant.

NOTE: The above corporation is to be paid by the Title Ins. & Trust Co., under Escrow #97,394, and the State Franchise Tax was paid by said Title Ins. & Trust Co. under Escrow #97,111. [64]

(3) Wages due workmen, clerks or servants to an amount not exceeding \$300 each, earned within three months before filing this petition.

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated). Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

NONE.

(4) Other debts having priority by law.

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated). Where and when contracted.—Nature and consideration of debt, and whether contracted as a partner or joint contractor; and if so, with whom. NONE.

Total,..... 117.50

FIELDING J. STILSON COMPANY,

By FIELDING J. STILSON,

Pres. Bankrupt. [65]

SCHEDULE A. (2)

CREDITORS HOLDING SECURITIES.

(N. B.—Particulars of Securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Acts of Congress relating to Bankruptcy; and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

Reference to Ledger or Voucher. Names of Creditors.—Residence (if unknown, that fact must be stated). Description of securities.—When and where debts were contracted.—

Value of Securities.

Dollars. Cents.

Richard B. Kirchhoffer, I. W. Hellman

Bldg., Los Angeles, Cal. Money

loaned. Evidenced by contract to

buy stocks. Secured by 50,000

shares Oleum Development Co. stock. 1,050.00

Value of Securities.

Dollars. Cents.

John C. Rupp, H. W. Hellman Bldg., Los Angeles, Cal. Money loaned. Evidenced by contract to buy stocks. Secured by 30,000 shares Oleum Development Co. stock..... 750.00

A. H. Woolacott, I. W. Hellman Bldg., Los Angeles, Cal. Money loaned. Evidenced by contract to buy stocks. Secured by 50,000 shares Oleum Development Co. stock..... 1,125.00

Mary D. Spalding, 134 N. Gets, Los Angeles, Cal. Money loaned. Evidenced by note dated 4/9/12, due 1 year, interest 7%. Secured by 15 shares San Diego Home stock, valued at \$100.00, and 80 shares University Club Holding Co. stock, valued at \$800.00..... 750.00

[66]

W. R. Staats Co., 4th St., Los Angeles, Cal..... 3,870.00

Purchase of stocks. Evidenced by note dated 3/19/12, due 1 day, interest 7%, payable monthly. Secured by Trust deed on the following lots in Angeleno Heights Tract:

Lot 17, Block 9.

Lots 2, 3, 6 and 7, Block 11.

Lots 66, 67, 68 and 69, Block 15½.

Lot 43, Block 16.

Value of Securities.

Dollars Cents.

Lot 5, Block 20.

Lots 3 and 27, Block 29.

Lots 1 and 16, Block 25.

Chas. M. Stimson, 901 California Bldg.,

Los Angeles, Cal..... 1,860.00

Contract to purchase real estate.

Evidenced by note dated Sep. 12th,

1911, due ———, interest 7%. Se-

cured by Lots 47, 49, 55 and 57, Block

14, Angeleno Heights Tract.

Chas. M. Stimson, 901 California Bldg.,

Los Angeles, Cal..... 1,240.00

Contract to purchase real estate.

Evidenced by note dated Sep. 12th,

1911, due ———, interest 7%. Se-

cured by contract to purchase Lots

39 and 41, Block 14, Angeleno

Heights Tract. Interest on above

notes due Stimson, to Sep. 12th,

1912..... 220.77

Chas. M. Stimson, 901 California Bldg.,

Los Angeles, Cal..... 4,000.00

Stock loaned. Secured by 25 shares

Union Oil Stock valued at \$2,500.00,

and 15 shares Union Provident Stock,

valued at \$1,500.00 toge, 8 dividends

accrued on said stock since Febru-

ary, 1912..... 192.00

[67]

Merchants' National Bank, Los Angeles,

California..... 13,500.00

Value of Securities.

Dollars Cents.

Money loaned. Evidenced by note dated Sep. 11th, 1911, due 1 day, interest 7%. Secured by Trust Deed on the following lots in Angeleno Heights Tract:

Lot 63, Block 14.

Lot 48, Block 17.

Lot 6, Block 28½.

Also secured by San Julian Street property, described on page 7-a of this Schedule.

Security Savings & Trust Co. Los Angeles, California.....	1,250.00
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Money loaned. Evidenced by note of \$2,500.00, on which payment of \$1,250.00 has been made, dated 4/7/11, due 1 day, interest 6%. Secured by 7 Riverside Home Telegraph Co. Bonds, valued at \$1,400.00.

Security Trust & Savings Bank. Los Angeles, California.....	3,000.00
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Money loaned. Evidenced by note dated 11/4/10, due 3 years, interest 7%. Secured by mortgage on W. 35 ft. of E. 116 ft. of Lot 1, Block F, Mott Tract, known as 511 W. 1st St. This is now the property of the Los Angeles-California Realty Company, but under terms of contract in which same was transferred from bankrupt

Value of Securities.

Dollars Cents.

to said company, bankrupt was to
pay mortgage.

Total.....32,807.77

FIELDING J. STILSON COMPANY,

By FIELDING J. STILSON,

Pres. Bankrupt. [68]

SCHEDULE A (2) Cont'd.

Forwarded \$32,807.77

Security Trust & Savings Bank, Los Angeles, Cal.....	3,000.00
Money loaned. Evidenced by note dated 10/26/07, due three years, interest 7%. Secured by Lots 1 and 2, Block 22, Angeleno Heights Tract. This has not been renewed.	
Security Trust & Savings Bank, Los Angeles, Cal.....	2,500.00
Money loaned. Evidenced by note dated 8/25/10, due three years, interest 6%. Secured by mortgage on Lots 66, 67, 68 and 69, Block 15½, Angeleno Heights Tract. This mortgage is signed by Mary Brant.	
Jennie S. Chapman, c/o L. M. Chapman, Ferguson Bldg., L. A.....	4,000.00
Money loaned. Evidenced by note dated 9/18/08, due 3 years, interest 7%. Secured by Lots in Angeleno heights, as follows:	
Lot 5, Block 20.	
Lots 1 and 16, Block 25.	

Value of Securities.

Dollars Cents.

Lot 45 and part of Lot 47, Block 28.

Lot 3 and a certain portion of Lot 27, Block 29.

On or about 8/13/11, Jennie S. Chapman released Lots 45 and 47, Block 28, and accepted in lieu thereof 5,000 shares of the capital stock of Feilding J. Stilson Company.

Citizens' National Bank, Los Angeles, California.....

13,500.00

Money loaned. Evidenced by note dated 11/4/09, due 1 day, interest 7%, in the principal sum of \$16,750, on which payments of \$3,250.00 have been made. Secured by Trust Deed on following lots in [69] Angeleno Heights:

Los 17, Block 9.

Lot 7, Block 10.

Lots 2, 3, 6 and 7, Block 11.

Lots 4 and 5, Block 13.

Lots 38, 44, 46, 52 and 54, Block 14.

Lots 6, 8, 10, 12, 17-20, 25 and 26,

Block 14 1/2.

Sallie F. McClure, 154 W. 21st St., Los Angeles.....

4,000.00

Money loaned. Evidenced by note dated 12/15/09, due 3 years, interest 7%. Secured by Lots 6 and 7, Block 26, Lot 19 in Block 31, and Lot 15, Block 24, Angeleno Heights Tract. Lots 6 and 7, Block 26, and Lot 15,

Value of Securities.

Dollars Cents.

Block 24, were property of Carroll A. Stilson when mortgage was made and were loaned to company, who received the \$4,000.00. They now stand in name of Carroll A. Stilson.

Florence Johnston, Kingsley Drive, Los Angeles, Cal..... 3,500.00

Money loaned. Evidenced by note dated 6/2/11, due 3 years, interest 7%. Secured by Lot 54, Block 14, Lot 84 in Block 151½, and Lot 48, Block 17, Angeleno Heights Tract.

Martha M. Fisher, c/o W. H. Allen & Sons, Douglas Bldg., L. A..... 3,500.00

Money loaned. Evidenced by note dated 7/26/11, due 3 years, interest 7%. Secured by Lot 45 and S. E. 54.5 ft. of Lot 47, Block 28, and Lot 11, Block 31, Angeleno Heights Tract.

[70]

N. C. Cramer, German Am. Svgs. Bk., Los Angeles..... 2,250.00

Money loaned. Evidenced by note dated 7/17/11, due 3 years, interest 7%. Secured by Lots 61, 62 and 63, Block 14, and Lot 6, Block 281½, Angeleno Heights.

Total..... 69,057.77

FIELDING J. STILSON COMPANY,
By FIELDING J. STILSON,
Pres. Bankrupt. [71]

Value of Securities.

Dollars. Cents.

SCHEDULE A (2) Cont'd.

Forwarded \$79,807.77

S. F. Keller, c/o Coyne & Coyne, Los Angeles..... 10,000.00

Money loaned. Evidenced by note dated 8/26/07, due 3 years, interest 7%. This note was renewed 8/26/10, for three years, bearing interest at 6½%. Secured by mortgage on San Julian Street property, more particularly described in Schedule B (1), page 7-a. Note and mortgage signed by Olivia Bollinger.

Florence Ingram, Panama Hotel, 2nd & Flower, Los Angeles..... 750.00

Money loaned. Evidenced by note dated 8/22/11, due 3 years, interest 7%. Secured by Lot 17, Block 31, Angeleno Heights Tract. Note and mortgage signed by Mary Brant.

Pacific Mutual Life Ins. Co., Los Angeles, Cal..... 38,859.48

Evidenced by notes, the exact description of which said bankrupt does not have at this time. This indebtedness is secured by mortgages on Lots 35, 37, 45, 51, 53 and 59, Block 14; Lots 1 to 4, 19, 21, 27, 29 and 45, Block 15; Lots 53 and 55, Block 15½; Lots 8, 10, 12, 13, 16, 18, 20, 34, 36 and 43, Block 16; Lots 26, 32 and 34, Block 18; Lot 3, Block 27;

Value of Securities.

Dollars Cents.

Lots 67, 67, 69 and 70, Block 28; and
 Lots 8 and 10, Block 30, all in Angel-
 eno Heights Tract.

Street Bonds, of Los Angeles City..... 6,500.00

This amount is estimated. There is
 also interest due on the principal on
 Jan. 1st, 1912, and also on July 1st,
 1912.

Total.....\$125,167.25

FIELDING J. STILSON COMPANY,
 By FIELDING J. STILSON,
 Pres. Bankrupt. [72]

SCHEDULE A (3).

CREDITORS WHOSE CLAIMS ARE. UNSECURED.

(N. B.—When the name and residence (or either) of any drawer, maker, endorser or holder of any bill or note, etc., are unknown, the fact must be stated; also, the name and residence of the last holder known to be the debtor. The debt due to each creditor must be stated in full, and any claim by way of setoff stated in the schedule of property.)

Reference to Ledger or Voucher. Name of Creditors. Residence (if unknown, that fact to be stated). When and where contracted. Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.

The following debts, incurred within two years last past, account of stock sold:

Value of Securities.	Dollars Cents.
R. G. Beebe, California Club, Los Angeles, Cal.....	4,987.50
J. C. Bowen, 811 S. Main St., Los Angeles, Cal.....	.62
Nat Boas, 454 Montgomery St., San Francisco.....	1.50
S. F. Baker, Santa Barbara, Cal.....	400.00
Chas. L. Crawford, 217 Stimson Bldg., Los Angeles, Cal.....	.75
C. W. Cordin, Nat'l Military Home, Virginia.....	4.00
(This amount paid personally by Carroll A. Stilson April 26th, 1912.)	
J. J. Doran, 119 W. 4th St., Los Angeles, Cal.....	15.00
William Davies, 1217 E. Vernon, Los Angeles, Cal.....	530.20
Max P. Fries, unknown.....	48.00
(\$24.00 of this account paid by F. J. Stilson April 9th, 1912.) [73]	
August Levy, S. Flower St., Los Angeles, Cal.....	24.95
Chas. J. Lehman, S. Spring St., Los Angeles, Cal.....	221.25
H. P. Oates, H. W. Hellman Bldg., Los Angeles.....	3.50
J. D. Radford, Hibernian Savings Bank, Los Angeles.....	2,775.00
Howard Surr, San Bernardino, Cal.....	2.85
Chas. W. Spencer, San Diego, Cal.....	28.00
(This paid by F. J. Stilson April 22, 1912.)	

Value of Securities.

Dollars Cents.

Dr. J. W. Trueworthy, Byrne Bldg., Los Angeles, Cal.....	2,768.50
(This includes an item of \$6.00, account check of F. J. S. Co., which was lost for nearly a year and at the time it was located the company no longer had any funds with which to take care of it.)	
Mrs. Ida B. Trueworthy, Byrne Bldg., Los Angeles, Cal.....	2,210.00
A. H. Thomas, L. A. Trust & Svgs. Bank, Los Angeles.....	.25
Harry Gray, Central Bldg., Los Angeles, Cal.....	2,500.00
The following account money paid for purchase of stocks:	
Olive E. Bigelow, Alhambra, Cal.....	1,130.65
Herman A. Jaeger, 623 N. May St., Chicago, Ill.....	39.85
Chas. Jones, 425 Court St., Los Angeles, Cal.....	135.00
(Evidenced by note dated ———, due ———, int.)	
Geo. D. Keym, N. Grand Ave., Los Angeles, Cal.....	167.50
W. E. Lester, 732 E. Hollywood Bldg., Los Angeles.....	25.15
Mrs. A. J. Reithmuller, Santa Monica, Cal.....	1,995.00
(Bonds sold.)	
C. S. Young, University Club, Los Angeles, Cal.....	70.00

Value of Securities.

Dollars Cents.

(Dividend due on stock of Mr. Young, held in the name of a stenographer of F. J. S. Co.) [74]	
Blankenhorn & Rath, Security Bldg., Los Angeles, Cal.....	4,912.50
A. L. Jameson, Security Bldg., Los Angeles, Cal.....	173.10
Geo. H. Letteau, Security Bldg., Los Angeles, Cal.....	2,395.75
(Consideration of last three stocks bought.)	
Thos. F. Bixby, 200 W. Jefferson St., Los Angeles.....	1,000.00
(Money loaned. Evidenced by note dated 2/1/12, due 8/1/12, interest 8%.)	
Julia B. Bixby, 200 W. Jefferson St., Los Angeles.....	1,000.00
(Money loaned. Evidenced by note dated 2/1/12, due 8/1/12, interest 8%.)	
Mrs. M. J. F. Stearns, c/o Ed Young Story Bldg., Los Angeles.....	2,500.00
(Money Loaned)	
Total.....	32,066.37

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt. [75]

SCHEDULE A. (3) CONTINUED.
CREDITORS WHOSE CLAIMS ARE
UNSECURED.

(N. B.)—When the name and resident (or either) of any drawer, maker, endorser or holder of

any bill or note, etc., are unknown, the fact must be stated, also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of setoff stated in the schedule of property.

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated). When and where contracted.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.

Value of Securities.

Dollars Cents.

Forwarded..... 32,066.37

The following debts due on account of stocks delivered over by claimants to bankrupt for manipulation on the Stock Market, and which were to be returned to claimants. The values placed on these stocks are the market value on April 22d, 1912, the date of the Trust Agreement entered into by bankrupt and its creditors, later voided by these bankruptcy proceedings;

Katherine Loeser, 20 Cherry St., San Francisco, Cal.....	2,000.00
Alice Adams, c/o R. G. Beebe, Cal., 20 Home Pfd., Club, Los Angeles.....	600.00
R. G. Beebe, California Club, 100 Homee Pfd., Los Angeles, Cal.....	3,000.00

Value of Securities.

Dollars Cents.

R. L. Horton, Henne Bldg., Los Angeles, Cal., 60 Home Pfd.....	1,800.00
G. D. Cadwalader, c/o L. A. Brick Co., Security Bldg., Los Angeles, Cal., 65 U. S. Long Distance Tel. Co.....	780.00
Dr. J. H. Bullard, Bullard Block, Los Angeles, Cal., 50 Home Savings....	6,250.00
Herbert Burdette, Consolidated, Realty Bldg., Los Angeles, 10 Union Oil Company.....	981.25
Wm. Miller, c/o M. A. Newmark & Co., Los Angeles, 20 Union Oil Company.	1,962.50
John E. Marble, H. W. Hellman Bldg., Los Angeles, Cal., 10 Union Oil Com- pany.....	981.25
Chas. M. Stimson, 901 California Bldg., Los Angeles, 25 Union Oil Com- pany.....	2,453.12
Dr. J. W. Trueworthy, Byrne Bldg., Los Angeles, Cal., 10 Union Oil Com- pany.....	981.25
M. T. Whitaker, Security Bldg., Los An- geles, Cal., 50 Union Oil Company..	4,906.25
Shirley Ward, Union Oil Bldg., Los An- geles. Cal., 30 Union Oil Company..	2,943.75
Cloyd G. Guyer, Central Bldg., Los An- geles, Cal., 30 Union Prov.....	2,940.00
Chas. M. Stimson, 901 California Bldg., Los Angeles, 15 Union Prov.....	1,470.00
W. E. Lester, 732 E. Hollywood Blvd., Hollywood, Cal., 50 Amalgamated Oil Company.....	2,950.00

Value of Securities.

Dollars Cents.

E. F. L. Nevin, 634 Belmont Ave., Los Angeles Cal., 10 Mexican Common..	567.50
Lawrence Lippert, W. Jefferson St., Los Angeles, Cal., 38 American Pet. Com.....	1,643.50
Dr. J. W. Trueworthy, nByrne Bldg., Los Angeles, Cal., 100 American Pet. Com.....	4,325.00
[77]	
Mrs. Ida B. Trueworthy, Byrne Bldg., Los Angeles, Cal., 50 American Pet. Com.....	2,162.50
Jacob Windish, 559 E. 33rd St., Los Angeles, Cal., 28 American Pet. Com.....	1,211.00
W. E. Lester, 732 E. Hollywood Blvd., Hollywood, Cal., 1000 Palmer Oil...	700.00
500 Belmont.....	5,075.00
1000 West End.....	2,100.00
E. J. Yound, Laughlin Bldg., Los Angeles, Cal., 500 Rescue Eula. Purchased and carried on margin.....	145.00
Geo. Rathbun, Wilcox Bldg., Los Angeles, Cal., 1500 United Oil Company.....	450.00
C. J. Lehman, S. Spring St., Los Angeles, Cal., 10,000 Consolidated Mines.....	575.00
C. Montgomery, c/o Montgomery Bros., Los Angeles, 8000 National Pacific..	240.00
Total.....	88,260.24

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt.

(4a)

SCHEDULE A (3), Cont'd.

Forwarded.....	\$ 88,260.24
Mrs. Anna Hilfrich, 241½ E. 4th St., Los Angeles, 30 San Diego Home Tel. Co.....	150.00
The following accounts for advertising:	
Dake Advertising Agency, 432 S. Main, (Disputed) Los Angeles.	651.34
[78]	
B'nai B'rith Messenger, 925 W. 7th, Los Angeles.....	30.00
Blade Pub. Co., Santa Ana, Cal.....	6.60
Daily Telegram, Long Beach, Cal.....	16.00
Commercial & Financial Chronicle, New York City.....	12.50
The Express, Los Angeles, Cal.....	308.44
The Los Angeles Examiner, Los Angeles, Cal.....	228.47
Evening Herald, Los Angeles, Cal.....	77.76
Los Angeles Times, Los Angeles, Cal.....	291.38
The Graphic, Los Angeles, Cal.....	16.20
The Oil Bradstreet, Los Angeles, Cal....	10.00
Ralph F. Mocine, 616 Bdwy., Central Bldg., Los Angeles, Cal.....	25.11
Program Pub. Co., 304 Mer. Trust Bldg., Los Angeles, Cal.....	24.00
Pasadena News Co., Pasadena, Cal.....	13.50
Pomona Progress, Pomona, Cal.....	7.92
Los Angeles Record, Los Angeles, Cal...	116.80
Read Advertising Agency, 1201½ S. Broadway, Los Angeles.....	76.50

Value of Securities.

Dollars Cents.

The Tribune, Los Angeles, Cal.....	174.38
So. Cal. Trolley, Los Angeles, Cal.....	16.30
The Independent, Santa Barbara, Cal...	27.50
The following accounts for supplies:	
L. A. Rubber Stamp Co., 131 S. Spring, Los Angeles....	4.25
Neuner Company, Los Angeles, Cal.....	22.55
Pioneer Paper Co., 247 S. Los Angeles St., Los Angeles, Cal.....	2.70
H. J. Pauly Co., 214 New High St., Los Angeles.....	3.80
Reeves Printing Co., 432 S. Main, Los Angeles.....	5.00
Elysian Spring Water, Valentine & Baxter Sts., Los Angeles.....	6.30
[79]	
Cunningham, Curtis & Welch, 3d & Spring, Los Angeles.....	24.50
Financial Press, New York City.....	3.25
J. H. Adams Co., rent, 111 W. 4th St., Los Angeles.....	500.00
Brown Bros., insurance, 402 L. A. Trust Bldg., Los Angeles.....	14.00
L. A. County Horticultural Com'n. ser- vices, Los Angeles, Cal.....	1.55
Swinnerton Bros., plumbing, 209 N. Bdwy., Los Angeles.....	5.50
Chas. Seyler, Jr., insurance, I. W. Hell- man Bldg., Los Angeles.....	74.25
Merchants & Mfg. Ass'n, Special Fund, Los Angeles, Cal.....	40.00

Value of Securities.

Dollars Cents.

A. L. Jamison, stock sold, evidenced by dishonored check of bankrupt, 305 Security Bldg., Los Angeles.....	3,000.00
A. L. Jamison, 305 Security Bldg., L. A., Balance due on Contract to Buy Stocks.....	1,117.94
Geo. H. Letteau, 305 Security Bldg., L. A.....	2,395.75
Balance due on note of \$32,110.00, dated 3/19/12, due 15 days, interest 18%. All securities closed out and this amount is deficiency.	

Total.....\$ 97,762.28

FIELDING J. STILSON, COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt.

(4-b)

SCHEDULE A (3) Cont'd.

Forwarded.....\$ 97,762.28

Babson's Statistical Organization, Inc., Wellsley Hills, Mass.....	75.00
Subscription to monthly financial sheet. [80] Coast Banker Pub. Co., 454 Montgomery St., San Francisco, Advertising.....	50.00
Pacific Wood & Coal Co., 730 W. Pico, Los Angeles, Cal., Supplies.....	85.60
C. C. Desmond, 3rd & Spring, Los Angeles, Cal., Merchandise Orders....	14.50

Value of Securities.

Dollars Cents.

W. P. Jefferies Co., 117 Winston St., Los Angeles, Supplies.....	40.25
Fielding J. Stilson and Carroll A. Stilson, 314 H. W. Hellman Bldg., Los Angeles, Cal., Assignees of W. J. Jerome and Frank M. Byron, being the agreed value on Apr. 22nd, 1912, of 34,000 shares of the Oleum Development Co., held by the Fielding J. Stilson Company for the benefit of said Jerome and Byron, which was sold by the bankrupt and later repurchased and redelivered to said parties by claimants.....	170.00
Los Angeles, California Realty Co., Los Angeles, Cal. Due on purchase price of real property by bankrupt.....	1,300.00
Helen A. Nevin, 634 N. Belmont, Los Angeles, Cal. Money loaned. Evidenced by note dated 7/23/10 due 3 years, interest 6%.....	1,000.00
Sallie F. McClure, 154 W. 21st St., Los Angeles. Money loaned. Evidenced by note dated 10/31/10 due 3 years, interest 6%, principal \$2,700.00, on which \$200.00 has been paid.....	2,500.00
Sallie F. McClure, 154 W. 21st St., Los Angeles. Money loaned. Evidenced by note dated 7/23/10, due 3 years, interest 6%, principal \$2,300.00, on which \$300.00 has been paid.....	2,000.00

Value of Securities.

Dollars Cents.

Mrs. Fielding Johnson, 1048 Kensington Road, Los Angeles. Money loaned. Evidenced by note dated 5/8/07, due 1 year, interest 6%, principal of note \$1,900.00.....	2,526.42
[81]	
Gustav Gardthausen, 1044 Kensington Road, Los Angeles. Money loaned. Evidenced by note dated 3/27/11, due 1 year, interest 5%.....	200.00
Gustav Gardthausen, 1044 Kensington Road, Los Angeles. Money loaned. Evidenced by note dated 9/19/11, due 1 year, interest 5%.....	75.00
Henry M. Newmark, c/o Loeb & Loeb, Attys., Los Angeles. Money to buy bonds. Evidenced by note dated 4/9/12, payable 1 year, interest 7%.....	3,097.50
Edith C. Lacey, Address unknown. Stocks sold. Evidenced by note dated 4/12/12, interest 7% due, date unknown.....	160.00
M. T. Kemmerer, 1465 E. 23rd St., Los Angeles. Stocks sold. Evidenced by note dated 4/16/12, due 6 months, interest 6%.....	651.30
Commercial Nat'l Bank, Los Angeles, California. Money loaned Feilding J. Stilson, but used by Company. Evidenced by note dated 4/10/11, payable 1 day, interest 7%.....	2,000.00

Value of Securities.

Dollars Cents.

Geo. A. Tweedy, Bradbury Mines, Rosario, Sonora, Mexico. Money due on rental of a house. Evidenced by note dated April —, 1912, due 6 months, int. 7%.....	52.90
Ellen F. Nutting, Deceased, estate. Emma L. Warner, Executrix, c/o Willard Butler, Attorney, Trust & Savings Bldg., Los Angeles. Evidenced by note dated 1/8/10 due two years, int. 7%. Money loaned.....	2,000.00

 \$115,760.75

**FIELDING J. STILSON COMPANY,
By FIELDING J. STILSON. [82]**

SCHEDULE A (3) Cont'd.

Forwarded.....\$115,760.75

Stilson Bros., 314 H. W. Hellman Bldg., Los Angeles. Cash advanced to various customers of the bankrupt, for small accounts, payments of interest on Gold Notes of Los Angeles, California, Realty Co., etc.....	609.03
Alfred K. Care, c/o Cudahy Pkg. Co., Los Angeles. Account three shares American Trust & Svgs. Bank stock sold at \$105.00 per share.....	315.00
Shaw Bros., 335 Bush St., San Francisco, Cal. Balance due account stocks sold by Shaw Bros., on margin for the account of bankrupt, which were	

Value of Securities.

Dollars Cents.

afterwards bought in at a loss of \$75.00, of which Shaw Bros. agreed to stand half. Bankrupt owed Shaw Bros. \$56.05 on open account, on other transactions, which, less the half of the \$75.00 loss, leaves a balance of \$18.55 due Shaw Bros..... 18.55

Daniel Shields, 4611 Wall St., Los Angeles, Cal. Account contract to pay street work on Lot 9, Block 27, Angeleno Heights Tract..... 109.55

Marie Uranie Pelton, Los Angeles, Cal. Account contract to pay street work on Lot 5, Block 28½, Angeleno Heights Tract..... 113.24

Gurney E. Newlin, 718 Title Ins. Bldg., Los Angeles, Legal services rendered to bankrupt..... 250.00

W. H. Anderson, 326 Stimson Bldg., Los Angeles, Cal. Legal services rendered. Amount unknown to bankrupt.....

\$117,176.12

FIELDING J. STILSON COMPANY,

By FIELDING J. STILSON,

Pres. Bankrupt. [83]

SCHEDULE A (4).

LIABILITIES ON NOTES OR BILLS DISCOUNTED WHICH OUGHT TO BE PAID BY THE DRAWERS, MAKERS, ACCEPTORS OR INDORSERS.

N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills, on which the debtor is liable as indorser.

Reference to ledger or Voucher.—Names of holders so far as known.—Residence (if unknown, that fact to be stated). Place where contracted.—Nature of liability, and whether contracted as partner or joint contractor with any other person; and if so, with whom.

Dollars Cents.

NONE.

Total.

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt. [84]

SCHEDULE A (5).

ACCOMMODATION PAPER.

N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth

under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.

Reference to Ledger or Voucher.—Name of holders.—Residence (if unknown, that fact must be stated). Names and residences of persons accommodated.—Place where contracted.—Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.

Gold Notes of the Los Angeles, California Realty Co., as follows:

Value of Securities.	Dollars. Cents.
George W. Adams, 123 N. San Pedro, Los Angeles, Cal.....	200.00
R. F. Byrne, Anaheim, Cal., 2 notes.....	200.00
James Backhouse, 712 Waterloo St., Los Angeles, Cal.....	200.00
Thos. F. Bixby, 200 W. Jefferson, Los Angeles, Cal.....	1,000.00
Joseph Braun, % Moose Club, Portland, Ore.....	200.00
Marie Bruns, 850 E. 25th, Los Angeles, Cal.....	1,500.00
Mrs. Mable Church, 860 Lake St., Los Angeles, Cal.....	200.00
Lambert L. Doty, 1041 Wall St., Los Angeles, Cal.....	200.00
Mrs. Sarah W. Ellis, 1811 S. State St., Syracuse, N. Y.....	2,500.00

89

Value of Securities.

Dollars. Cents.

3 notes of \$500.00 each, and 1 note of
\$1,000.00.

George A. Hess, 1314 Alhambra Road,
Alhambra, Cal..... 1,000.00

[85]

John Helme, 1355 Union Ave., Los An-
geles, Cal..... 400.00

F. L. Jackson, 525 California St., Los An-
geles, Cal..... 100.00

Minnie Irvine, 1317 SeLong St., Los An-
geles, Cal..... 200.00

J. M. Kransneck, 422 E. Anaheim, Long
Beach, Cal..... 2,000.00

P. MacKuehnrick, L. A. Trust & Savings
Bldg., Los Angeles..... 1,000.00

J. E. Little, 1114 Pleasant View Ave.,
Los Angeles..... 100.00

F. J. Nunnelly, 208 W. 6th St., Pomona,
Cal..... 500.00

Lorenzo R. Peebles, W. Ave. 57, Los An-
geles, Cal..... 3,000.00

Emma D. E. Stokley, 1227 W. 8th St.,
Los Angeles, Cal..... 100.00

Ole B. Sjorberg, 806 New York St.,
Long Beach, Cal..... 400.00

Marie Thornton, 1227 Elysian Park
Drive, Los Angeles..... 300.00

Total, 15,300.00

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Bankrupt.

OATH TO SCHEDULE "A."

United States of America,
Southern District of California,—ss.

On this 25th day of November, A. D. 1912, before me, personally came Fielding J. Stilson, President of Fielding J. Stilson Company, the corporation mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all its debts, in accordance with the Acts of Congress relating to bankruptcy, to the best of his knowledge, information and belief.

[Seal]

M. LUCILE ADAMS,
Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires July 8, 1914. [86]

**Schedule "B"—Statement of All Property of
Bankrupt [In re Stilson, Bankrupt].**

SCHEDULE "B" (1).

REAL ESTATE.

Location and description of all real estate owned by debtor, or held by him. Incumbrances thereon, if any, and dates thereof. Statement of particulars relating thereto.

Dollars. Cents.

The following real property, all situate in Angeleno Heights Tract, in the County of Los Angeles, State of California, as per map recorded in Book 10, pages 63 et seq., Miscellaneous Records of said

County. (The value given here is that fixed by Messrs. W. W. Mines, Marshall Stimson and Robt. Marsh, all of Los Angeles, California.)

Lot 17, Block 9, subject to mortgage to Citizens' National Bank, together with other property	1,350.00
Lot 7, Block 10, subject to mortgage to Citizens' National Bank, together with other property	1,125.00
Lots 2, 3, 6 and 7, Block 11, subject to mortgage to Citizens' National Bank, together with other property.....	4,050.00
Lots 4 and 5, Block 13, subject to mortgage to Citizens' National Bank, together with other property.....	1,350.00
Lots 35 to 39, 41, 43 to 47, 49, 51 to 54, 57, 59, and 61 to 64, Block 14.....	24,255.00

Lot 64 subject to mortgage to Florence Johnson.

Lots 35, 37, 45, 51, 53 and 59 subject to mortgage to Pacific Mutual, together with other property.

Lots 61, 62 and 63 subject to mortgage to N. E. Cramer.

Lot 63 subject to mortgage to Merchants' National Bank, together with other property.

Lots 38, 44, 46, 52 and 54 subject to a mortgage to Citizens' National Bank, together with other property.

Lots 39, 41, 47, 49, 55 and 57 subject to

Dollars Cents.

mortgage to Chas. M. Stimson. [87]	
Lots 1, 6, 8, 10, 12, 17 to 20, 25 and 26 Block 14½, subject to mortgage to Citizens' National Bank.....	9,855.00
Lots 1 to 4, 19, 21, 27, 29 and 45, Block 15, subject to mortgage to Pacific Mutual.. .. .	18,000.00
Lots 53, 55, 61, 66 to 69, and 84, Block 15½	14,400.00
Lot 84 subject to mortgage to Florence Johnson.	
Lots 53 and 55 subject to mortgage to Pacific Mutual.	
Lots 66, 67, 68 and 69, subject to mort- gage to Security Savings Bank, together with other property.	
Lots 8, 10, 12, 14, 16, 18, 20, 26, 28, 34, 36 and 43, in Block 16	15,300.00
All except Lots 26 and 28 subject to mortgage to Pacific Mutual.	
Lots 8, 10, 12, 39 and 48. Block 17.....	11,475.00
Lots 8, 10, 12 and 39, subject to mort- gage to Florence Johnson.	
Lot 48 subject to mortgage to Mer- chants' National Bank.	
Lots 26, 32 and 34, Block 18, subject to Mortgage to Pacific Mutual.....	5,670.00
Lots 16 and 17, Block 19.....	900.00
Lot 5, Block 20, subject to mortgage to J. S. Chapman.....	1,800.00
Lots 1 and 2, Block 22, subject to Mort-	

	Dollars	Cents.
gage to Security Savings Bank, together with other property.....	5,850.00	
Lots 1 and 16, Block 25, subject to mortgage to J. S. Chapman.....	5,850.00	
Lots 1, 3, Block 27.....	6,525.00	
Lots 3, 5 and 7 subject to mortgage to Pacific Mutual.		
Lots 45, 47, 53, 55, 65, 67, 69 and 70, Block 28.....	15,795.00	
Lots 65, 67, 69 and 70 subject to mortgage to Pacific Mutual. Lots 45 and 47 subject to mortgage to M. M. Fisher.		
Lot 6, Block 28½.....	4,500.00	
Subject to mortgages to Merchants' National Bank and N. E. Cramer. [88]		
Lots 3, 6, 8, 18, 20, 26 and 27, Block 29....	8,010.00	
Lots 3 and 27 subject to mortgage to J. S. Chapman,		
Lots 8, 10, 20, 24 and 25, Block 30.....	8,100.00	
Lots 8, 10, 12, 14 and 16 subject to mortgage to Pacific Mutual.		
Total....	164,160.00	

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt. [89]

SCHEDULE B (1), CONTINUED.

Forwarded \$164,160.00

Dollars Cents.

Lots 11, 17, 25, 27, 29, 31, 33, 35, 37, 46,

47, 52, 54, 56, 60 and 61, Block 31 . . . \$ 25,200.00

**Lot 17 subject to Mortgage to Florence
Ingraham.**

**Lots 25, 27, 31, 33, 35, 37 and 46, 47 and
52 subject to Mortgage to Pacific Mutual.**

**Lot 11 subject to mortgage to M. M.
Fisher.**

Lot 19, Block 31, subject to mortgage to

Sallie F. McClure 2,160.00

**The following property, known as 540-
550 San Julian Street, located in the City
of Los Angeles, County of Los Angeles,
State of California, as per map recorded
in Book, page, Records of
of said County:**

**Beginning at the Easterly line of San
Julian Street; in the City of Los An-
geles, County of Los Angeles, State
of California, at the intersection of
said line with the northerly line of
the property now, or formerly,
owned by John McIlmoil; thence
Northerly along said line of San
Julian Street forty (40) feet; thence
South, fifty-five degrees (55°) and**

thirty-four minutes (34') East, parallel with said northerly line of the property of McIlmoil, one hundred ten and one-half ($110\frac{1}{2}$) feet more or less, to the Westerly line of the property now, or formerly, owned by Elizabeth Morton Scott; thence South, thirty-one degrees (31°) West along said line forty (40) feet, more or less, to said Northerly line of McIlmoil; thence North fifty-five degrees (55°) and thirty-four minutes (34') West, along said line one hundred and nine (109) feet, more or less, to the beginning. Also,

Beginning on the Easterly line of San Julian Street, distant forty (40) feet Northerly from the intersection of [90] said line with the Northerly line of the property now, or formerly, owned by John McIlmoil; thence Easterly, parallel with the said Northerly line of McIlmoil one hundred ten and one-half ($110\frac{1}{2}$) feet, more or less, to the property now or formerly owned by Elizabeth Morton Scott; thence North thirty-one degrees (31°) East, forty-three (43) feet, more or less, to the Northeast corner of the tract of land formerly owned by Nicholas Chronis; thence

Dollars Cents.

North fifty-eight degrees (58°) West,
one hundred and twelve (112) feet;
more or less, to the Easterly line of
San Julian Street; thence Southerly
along said line thirty-nine and
twenty-hundredths (39.20) feet,
more or less, to beginning..... 36,000.00

Subject to mortgage to S. F. Keller,
\$10,000.00, to Trust Deed to Merchants
National Bank, together with other prop-
erty, and subject to Grant Deed, as secu-
rity, to Geo. H. Letteau.

Total.....\$227,520.00

NOTE: Lots 25, 27, 29 and 31, Block 31; Lot 6,
Block 28½; Lot between #1 and #2, Block 27; Lots
17 and 19, Block 31; Lots 63 to 69 Inc., Block 28, and
Lots 45 and 47, Block 28, Angeleno Heights Tract,
subject to Billboard Leases, which expire 5/1/13.

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt. [91]

SCHEDULE B (2).

PERSONAL PROPERTY.

Dollars Cents.

A. Cash on handNone.

B. Bills of Exchange promissory notes,
or securities of any description
(each to be set out separately).

R. L. Anderson, I. W. Hellman

Bldg., 2000 Cal. Hills Stock held.. 52.00

Security Trust and Savings Bank

Dollars Cents.

Chas. Daniels, 1162 E. 52nd, L. A., 6,000 Oleum Dev. Co. held.....	481.82
M. & Wm. B. Herriott, W. 21st St., L. A., Notes held.....	151.25
Wm. Miller, % M. A. Newmark & Co., L. A., 40 Union Oil Stock held.....	1,095.14
Mrs. C. C. Redmond, S. Hope, L. A., 6000 Oleum Dev. Co. held.....	485.98
Elizabeth A. Worth, 5000 Ditto.....	112.50
E. J. Young, Laughlin Bldg., L. A., 500 Rescue Eula Stock held.....	46.50
Mary E. Stilson, Los Angeles, Cal., open account.....	13,403.01
F. J. Stilson, Los Angeles, Cal., open account.....	17,494.34
F. N. Coffin, note held.....	480.00
C. Stock in trade in business of at of the value of.....	None
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:..	None

 Total..... 23,802.54

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt. [92]

**SCHEDULE B (2) CONTINUED.
PERSONAL PROPERTY.**

	Dollars	Cents
E. Books, prints and pictures, viz.....	None.	
F. Horses, cows, sheep and other animals (with number of each), viz.	None.	
G. Carriage and other vehicles, viz.....	None.	
H. Farming stock and implements of husbandry, viz.....	None.	
Total		

FIELDING J. STILSON COMPANY.

By **FIELDING J. STILSON,**

Pres. Bankrupt. [93]

**SCHEDULE B (2) CONTINUED.
PERSONAL PROPERTY.**

	Dollars	Cents
I. Shipping and shares in vessels, viz...	None.	
K. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz.: Office furniture and fixtures, located at 314 H. W. Hellman Bldg., and also stored in vacant room in H. W. Hellman Bldg., of the value of	1,185.	63
L. Patents, copyrights and trade marks, viz:.....	None.	
M. Goods or personal property of any other description, with the place where each is situated, viz.: Hibernian Savings Bank, Los Angeles, California.....	933.	88

Bankrupt owed these people \$10,050.00,
and had hypothecated as security there-
for the following stocks and bonds:

30 Union Oil Co. 14 Central Nat'l
Bank.

Cal. Pac. R. R. Bonds, \$2,000.00.

L. A. Gas & Electric Co. Bonds,
\$3,000.00.

These were sold out by the bank, which
together with coupons and dividends,
amounted to \$11,296.87. The principal
of the notes and interest owing them
amounted to \$10,362.99, leaving above
balance due the bankrupt.

Seat on Stock Exchange..... 1,500.00

Bankrupt informed this sold by Geo.
Letteau and A. H. Woolacott.

Total..... 3,619.51

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt. [94]

SCHEDULE B (3).

CHOSSES IN ACTION.

Dollars Cents

A. Debts due petitioner on open ac-
count

Oleum Development Co. Money ad-
vanced.....

11,040.50

Lillian Bailey, address unknown.

Rent due

80.00

	Dollars.	Cents
J. W. Palmer, San Fernando, Bldg., L. A.	15.	00
Mrs. C. C. Redmond, S. Hope St., L. A. Money advanced.	96.	00
M. Stevens, address unknown. Rent due.	117.	00
A. W. Spurgeon, San Julian St., City. Rents due.	68.	00
This account reduced from \$174.00 by Stilson Bros., who hold the money. This account offset by accounts paid		
Wm. C. Taylor, address unknown...	14.	25
L. A. California Realty Co., 314 H. W. Hellman Bldg. Money advanced	2,375.	69
W. F. Palmer, San Fernando Bldg., L. A. Marginal Stock Transac- tion.	142.	50
B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.		
See page 11-a.		
C. Policies of insurance.		
Insurance on office furniture, Ger- man American Alliance Policy, expires Nov. 28th, 1912, premium not paid,	500.	00
Security Trust & Savings Bank and Scott Fremont Keller also hold policies on San Julian Street property.		

D. Unliquidated Claims of every nature
with their estimated value.

E. Deposits of money in banking institutions and elsewhere.

*Commercial National Bank, Los Angeles, Cal..... 5.00

First National Bank, Los Angeles, Cal. 4.64

Merchants National Bank, Los Angeles, Cal..... 1.79

*Understand this amount charged off and credited on interest due on note of F. J. Stilson.

Total 14,460.46

FIELDING J. STILSON COMPANY

BY FIELDING J. STILSON,

Pres. Bankrupt. [95]

SCHEDULE B (3), CONTINUED

B. Stocks and Bonds.

Dollars Cents.

The value placed upon these stocks and bonds is of the market value Apr. 22d, 1912.

15 Shares San Diego Home..... \$100.00

Hypothecated to M. D. Spaulding... 750.00

1 Share Home Telephone, Pfd..... 30.00

1 " L. A. Bond & Mortgage Co.

140 Amalgamated Oil Co..... 8,400.00

F. J. Stilson Co. purchased 200 Amalgamated Oil @ 64½ from Wm.

R. Staats Co. The check in pay-

ment was dishonored. The Staats Co. delivered 60 shares and gave bankrupt a due bill for balance of 140 shares, valued at \$8,400.00. The bankrupt then borrowed money from A. L. Jameson, giving as security the 60 shares of Amalgamated Oil and the due bill of the Staats Co. for 140 shares. The 60 shares were sold. 210,000 Oleum Developement Co.

80,000 shares hypothecated to A. L. Jameson, \$10,145.00.

50,000 shares hypothecated to Richard B. Kirchhoffer, \$1,050.00.

50,000 shares hypothecated to A. H. Woolacott, \$1, 125.00

30,000 shares hypothecated to John C. Rupp, \$1,050.00.

80 University Club Holding Co..... 800.00

Hypothecated to M. D. Spalding, \$750.00.

10 Santa Monica Bay Home Tel. Co. 50.00

\$100 L. A. Country Club Bond..... 100.00

70 Johnnie Mining & Milling Co. ... 5.60

500 Bonnie Claire Mining Co..... 10.00

.. 1,000 McKittrick Investors Oil Co.

3,000 Goldfields Eureka Co.

6,000 Cleveland Oil Co.

6,000 Midway Union Oil Co.

	Dollars	Cents
\$3,500 Riverside Home Tgh. Co.		
Bonds 7.	1,400.	00
Hypothecated to Security Trust & Svgs. Bank, \$1,250.00.		
	\$10,895.	60

FIELDING J. STILSON COMPANY
BY FIELDING J. STILSON,
Pres. Bankrupt. [96]

SCHEDULE B (4)

PROPERTY IN REVERSION, REMAINDER
OR EXPECTANCY, INCLUDING PROP-
ERTY HELD IN TRUST FOR THE
DEBTOR OR SUBJECT TO ANY POWER
OR RIGHT TO DISPOSE OF OR TO
CHARGE.

N. B. —A particular description of each interest must be entered. If all, or any of the debtor's property has conveyed by deed of assignment or otherwise, for the benefit of creditors, the date of such should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.

General Interest.	Particular Description.	Supposed Value of My Interest. Dollars Cents.
Interest in land.		

NONE

Personal property.

NONE.

Property in money, stocks, shares,
bonds annuities, etc.

NONE

Rights and powers, legacies and bequests.

NONE

Total——

Property heretofore conveyed for the benefit of creditors.

Amount Realized
from Proceeds of
Property Conveyed.

What portion of debtor's property has been conveyed by deed of assignment, or otherwise for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.

What sum or sums have been paid to counsel, and to whom for services rendered or to be rendered in this bankruptcy.

NONE

All property and assets of bankrupt assigned over to Carroll Allen and Willis H. Booth, for the benefit of all creditors, on April 22d, 1912.

Total

FIELDING J. STILSON COMPANY.

By FIELDING J. STILSON,

Pres. Bankrupt.

SCHEDULE B (5).

A particular statement of the Property claimed as Exempted from the Acts of Congress relating to Bankruptcy, giving each item of Property and its valuation; and if any portion of it is Real Estate, its location, description and present use.

Dollars Cents

Military uniforms, arms and equipments.

Military uniforms, arms and equipments. None.

Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.

None.

FIELDING J. STILSON COMPANY.

By **FIELDING J. STILSON,**

Pres. Bankrupt. [98]

SCHEDULE B (6).

**BOOKS, PAPERS, DEEDS AND WRITINGS
RELATING TO BANKRUPT'S BUSINESS
AND ESTATE.**

The following is a true list of all books, papers, deeds and writings relating to my trade, business dealings, estate and effects, or any part thereof, which at the date of this petition, are in my possession, or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession or under my custody or control, and which are now held by the parties whose names

are hereinafter set forth, with the reason for their custody of the same.

Dollars Cents

Books.

314 H. W. Hellman Bldg., Los Angeles, Cal.

Deeds.

314 H. W. Hellman Bldg., Los Angeles, Cal.

Papers.

314 H. W. Hellman Bldg., Los Angeles, Cal.

FIELDING J. STILSON, COMPANY.

By FIELDING J. STILSON,
Pres. Bankrupt.

OATH TO SCHEDULE B.

United States of America,

Southern District of California,—ss.

On this 25th day of November, A. D. 1912, before me, personally came Fielding J. Stilson, President of Fielding J. Stilson Company, the corporation mentioned in and who subscribed to the foregoing schedule and who, being by me [99] first duly sworn, did declare the said Schedule to be a statement of all its estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

[Seal]

M. LUCILE ADAMS,

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires July 8, 1914.

[Endorsed]: No. 1045. United States District Court, Southern District of California, Southern Division. In the Matter of Fielding J. Stilson Company, Bankrupt. Petition by Debtor with Sched-

ules "A" and "B." (Schedules must be filed in Triplicate.) Filed Nov. 27, 1912, at 5 min. past 3 o'clock P. M. Wm. M. Van Dyke, Clerk. Virgil W. Owen, Deputy. Carroll Allen, 1027 Title Ins. Bldg., Attorney for Bankrupt. [100]

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 235—CIVIL, S. D.

**SECURITY TRUST & SAVINGS BANK, TRUS-
TEE, ETC.,**

Complainant,

vs.

WM. R. STAATS COMPANY, et al.,

Defendants.

Transcript of Testimony.

On hearing before Hon. LYNN HELM, Special Master, at his office, 918 Title Insurance Building, Los Angeles, California, April 23d, 27th and 28th, 1915.

Filed May 21, 1915 at — min. past 2 o'clock P. M.

LYNN HELM, Referee.

C. MEADE, Clerk.

WILLIAM T. CRAIG, Esq., Counsel for Com-
plainant.

Messrs. O'MELVENY, STEVENS & MILLI-
KIN and WALTER K. TULLER, Counsel
for Defendant Wm. R. Staats Co.

ELIZA P. HOUGHTON, Court Reporter and
Notary Public. 836 Title Insurance Build-
ing, Los Angeles, Cal.

Filed June 18, 1915. Wm. M. Van Dyke, Clerk.
By Leslie S. Colyer, Deputy. [101]

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 235—CIVIL, S. D.

SECURITY TRUST & SAVINGS BANK, TRUS-
TEE, etc.,

Complainant,

vs.

WM. R. STAATS COMPANY, et al.,

Defendants.

Appearances:

WILLIAM T. CRAIG, Esq., of Counsel for
Complainant.

O'MELVENY, STEVENS & MILLIKIN and
WALTER K. TULLER, Counsel for De-
fendant Wm. R. Staats Co.

TRANSCRIPT OF TESTIMONY.

On hearing before Hon. LYNN HELM, Special
Master, at his office, 918 Title Insurance Building,
Los Angeles, California, on the 23d day of April,
1915, at 10:30 o'clock A. M. [102]

**[Proceedings Had Before Special Master on April
23, 1915.]**

Mr. CRAIG.—I will call Mr. Fielding J. Stilson.

Mr. TULLER.—Before any testimony is taken I
should like to make a general objection to the bill of
complaint on the ground that it does not state facts
sufficient to constitute a cause of action, therefore
object to the taking of any testimony.

The SPECIAL MASTER.—Objection overruled.

Mr. CRAIG.—Before proceeding with the testimony of Mr. Stilson, I desire to offer in evidence the petition in bankruptcy in this matter, together with the report of the Special Master and the order confirming the report of the Special Master and the order of adjudication.

Mr. TULLER.—To which the defendant objects on the ground that it is incompetent, and relates to a time subsequent to the time in which it is alleged in the bill of complaint that the deed of trust here sought to be set aside was executed; the motion was that on said time, to wit, the 19th day of March, 1912, the Fielding J. Stilson Company was insolvent. I have a number of authorities on that subject if your honor cares to hear me on that.

The SPECIAL MASTER.—Your idea is that the insolvency or the adjudication of insolvency at the date of the filing of the petition has no bearing upon the question of insolvency at the time of the giving of the trust deed?

Mr. TULLER.—Yes, sir. I believe that is the law established by the authorities.

Mr. CRAIG.—I am not offering the testimony for the purpose of proving that at the date this deed was obtained the corporation was insolvent. I shall follow the fact that a preference was alleged.

Mr. TULLER.—We further object that there should be a further specification, that the petition is not in any sense binding upon this defendant. [103]

The SPECIAL MASTER.—I understand. This Circuit Court of Appeals is binding upon this Court.

Mr. TULLER.—I want to preserve my objection.

The SPECIAL MASTER.—The objection will be overruled and the testimony will be received. You have a right to reserve the matter for final argument.

Mr. CRAIG.—I said it was not for the purpose of proving insolvency at that time, but I don't mean to say that it was not offered for the purpose of binding the respondent here, because one of the acts of bankruptcy alleged in the petition was this very preference.

Mr. TULLER.—May it be understood that whenever an objection is overruled that an exception will be made?

The SPECIAL MASTER.—But you will have to make your objection.

Mr. TULLER.—Yes. Do I understand that you offer each and all of the papers in this bankruptcy?

Mr. CRAIG.—These are the ones.

Mr. TULLER.—There were three different petitions. All of them will be offered?

Mr. CRAIG.—Yes.

The SPECIAL MASTER.—The order of adjudication is of record.

Mr. CRAIG.—Yes and also the order confirming the Master's report.

Mr. TULLER.—The offer, then, amounts to all of the papers leading up to the adjudication in bankruptcy?

Mr. CRAIG.—Yes, sir.

[Testimony of Fielding J. Stilson, for Plaintiff.]

FIELDING J. STILSON, a witness produced on behalf of complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows: [104]

Direct Examination.

(By Mr. CRAIG.)

Q. What is your name?

A. Fielding J. Stilson.

Q. Were you connected with the Fielding J. Stilson Company in the year 1912? A. I was.

Q. In what capacity?

A. Superintendent and general manager.

Q. Were you such at the date of the petition adjudication (in pencil) in bankruptcy of October 24th, 1912? A. I was.

Q. And how long prior thereto had you been such officer?

A. Since the incorporation of the company.

Q. When was that?

A. 1903, I believe, or 1904. I am not certain of that date.

Q. The schedules in bankruptcy in this matter, Mr. Stilson, were executed by you?

Mr. TULLER.—I do not understand by what right the witness examines these schedules now unless they are offered in evidence.

Mr. CRAIG.—I do not intend to offer all of them. I shall call attention to certain parts of them.

The SPECIAL MASTER.—Answer the question, yes or no.

(Testimony of Fielding J. Stilson.)

A. It was the schedule signed by myself.

Q. Will you examine the schedules and state the amount of the liabilities of the Fielding J. Stilson Company at the date of their filing on November 27th, 1912?

Mr. TULLER.—I object to the witness examining the schedules, first that it is incompetent, second, that it is not a memorandum made by the witness at the time it occurred; he therefore has no right to examine them for the purpose of his recollection. [105]

The SPECIAL MASTER.—Objection sustained.

Q. What were the liabilities of the Fielding J. Stilson Company at the time you filed this petition in bankruptcy?

Mr. TULLER.—Objected to on the ground that it relates to a time many months subsequent to the time, March 20th, 1912.

The SPECIAL MASTER.—Objection overruled.

A. Couldn't answer without an examination of the schedules.

Q. The schedules you have just testified to about? Will you examine the schedules—

Mr. TULLER.—Just a moment, I make the same objection to that as already made heretofore to the schedules; further that it is not a book of original entry.

Q. Do the schedules correctly state your liabilities at the time they were filed?

Mr. TULLER.—Objected to as a conclusion of the witness and on the grounds already stated.

The SPECIAL MASTER.—Objection overruled.

(Testimony of Fielding J. Stilson.)

A. They did to the best of my knowledge and belief.

Q. I will now ask the witness to testify as to the amount of the liabilities on that date?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Objection sustained. I don't know why he should look at them.

Mr. CRAIG.—I am not going to offer the schedules. I do not propose to be bound by the schedules. I will offer the schedules so far as they relate to the liabilities of the corporation.

Mr. TULLER.—Object to them as incompetent and not the books of original entry.

The SPECIAL MASTER.—The schedules, I think, are admissible in evidence.

Mr. TULLER.—We will object to the offer of any portion of them. [106]

The SPECIAL MASTER.—But I don't think that they are conclusive on anybody.

Mr. CRAIG.—That is true, but the trustee in this case does not propose to be bound by valuations of properties which are included in these schedules as showing assets, because the valuation of the bankrupt was so out of proportion that the trustee does not propose to be bound by them.

The SPECIAL MASTER.—I don't suppose the trustee will be bound by them. He can always show the fact as to what is the truth. The schedules are admissible in evidence for what they are.

Mr. CRAIG.—I am perfectly willing to offer the schedules in evidence for the purpose of showing that

(Testimony of Fielding J. Stilson.)

the schedule was filed by the bankrupt.

Mr. TULLER.—We will stipulate that they did file the schedules.

Mr. CRAIG.—If counsel wants me to get all of the books and papers of the Fielding J. Stilson Company, we will sit down here for three or four days. The objection is wholly technical because if the liabilities are not true, then I am perfectly willing to go behind the schedules and bring the books and Mr. Palethorpe, the auditor.

The SPECIAL MASTER.—He can testify as to that without going all over the books. You can take his report and tell what they are, his summary is admissible in evidence.

Mr. TULLER.—I have no desire to be technical, but he has already stated that in some instances the schedules are incorrect.

Mr. CRAIG.—I said that the properties are of different values. I think that every statement in these schedules is absolutely correct and true so far as they state facts.

The SPECIAL MASTER. Call your witnesses. You may get Mr. Palethorpe, his report, and prove it.

Mr. TULLER.—I will ask that the witness for the present not [107] be allowed to examine the schedules.

Q. (By the SPECIAL MASTER.) Don't you know what your liabilities were?

A. I could not answer after three years what they were.

Q. (By the SPECIAL MASTER.) Don't you re-

(Testimony of Fielding J. Stilson.)

member what approximately your liabilities were?

A. Yes.

Q. (By the SPECIAL MASTER.)—What were they?

A. As I remember it, in the neighborhood of two hundred and fifty thousand or two hundred sixty thousand dollars. That is only a guess.

Mr. TULLER.—I move to strike out—

The WITNESS.—It may be ten thousand more or ten thousand less.

Mr. CRAIG.—That is approximately?

A. Yes.

The SPECIAL MASTER.—That is all it is. I asked him approximately what it was.

Q. At the time that you filed your schedules, was the Fielding J. Stilson Company engaged in business? A. Yes.

Q. Were they conducting their business at that time?

Q. (By the SPECIAL MASTER.)—At the time the schedules were filed? The schedules were filed after the adjudication in bankruptcy.

Q. At the time the schedules were filed were you engaged in business?

A. The corporation was not.

Q. When did the corporation cease doing business?

Mr. TULLER.—Objected to as incompetent, irrelevant and immaterial.

The SPECIAL MASTER.—Objection overruled.

[108]

A. On or about March the 19th, 1912.

(Testimony of Fielding J. Stilson.)

Q. What was its business?

A. Investments, stocks and bonds.

Q. It had been actively engaged prior to that time for how long?

A. Since the incorporation of the company about 1903 or 4.

Q. About to what extent was its annual business?

Mr. TULLER.—During what time?

Q. Prior to March, 1912, during the year prior to that time?

Mr. TULLER.—The question relates to the total volume of business?

A. Our deposits ran from one hundred to two hundred thousand dollars a month. That varied, of course.

Q. Why did the corporation cease doing business on or about the 19th day of March, 1912?

Mr. TULLER.—Objected to as incompetent, irrelevant and immaterial.

The SPECIAL MASTER.—Objection overruled.

A. Unable to meet its pressing obligations, and a physical break-down on my part.

Q. What became of the assets of the corporation between the 19th day of March and the time of the filing of the petition in bankruptcy?

A. They were deeded to Mr. Carroll Allen and Mr. Willis H. Booth.

Q. As trustee of the corporation? A. Yes.

Mr. TULLER.—May I ask when that deed was made simply to save time?

(Testimony of Fielding J. Stilson.)

Q. (By the SPECIAL MASTER.) Do you know?

Mr. ALLEN.—A little after the middle of March.

The SPECIAL MASTER.—It is here in the Master's report, Mr. Tuller, that the 15th day of March, 1912, the indebtedness of the Stilson Company was two hundred fifty thousand dollars, nearly [109] two hundred sixty thousand dollars.

Mr. TULLER.—I would like to get it.

The SPECIAL MASTER.—The 15th day of March seems to be the day in which things were fixed that the findings relate to.

Q. Was there any change in the assets and liabilities of the Fielding J. Stilson Company, a bankrupt, between the 19th day of March, 1912, and the date of the filing of the schedules in bankruptcy?

Mr. TULLER.—That is objected to as calling for a conclusion of the witness. The reference to what its debts or liabilities were is too vague and indefinite to prove insolvency at that time.

The SPECIAL MASTER.—The question isn't what his liabilities were, but the question is simply was there any change.

Mr. TULLER.—Further, it is a conclusion. There might be a number of question of law as to the change.

The SPECIAL MASTER.—You can start with and follow out the schedules and you can prove that there has been no change during that time.

Mr. TULLER.—I don't deny that that may be done in that manner. I object that this is not the

(Testimony of Fielding J. Stilson.)

proper way. He simply asks a conclusion of the witness.

The SPECIAL MASTER.—The petition in—the date is fixed and the liabilities and the assets at the time of the filing of the petition. The testimony is that they were not in business at all; they didn't transact any business after the 19th day of March.

Mr. CRAIG.—I can't prove everything in a minute. I will follow this up by following this along if counsel will permit.

The SPECIAL MASTER.—I understand, but I don't see why, when [110] a man that is in charge of a business,—suppose this was not a corporation; suppose it was an individual and he was,—ceased business on a certain day, and subsequently, three or six months afterwards filed schedules in bankruptcy, isn't it competent for him to say that things remain just the same between those two dates?

Mr. TULLER.—I think that I can show that the witness was ill during that time, and out of his head, and was not competent to show during that time.

Mr. CRAIG.—That is cross-examination.

Mr. TULLER.—If he was ill and away from the business, it is simply a matter of hearsay. If you will allow me to bring that out, I will; I don't think that counsel will deny that that is a fact.

Mr. CRAIG.—That is purely cross-examination, because this witness knew.

The SPECIAL MASTER.—The testimony will be received and can be stricken out.

Mr. TULLER.—May I ask your Honor to direct

(Testimony of Fielding J. Stilson.)

the witness to state, if he knew?

Q. (By the SPECIAL MASTER.) If you know?

A. I know. There were some slight changes, some rents were paid in, but the main body of assets and liabilities were the same.

Mr. TULLER.—I object to that, the main body.

The SPECIAL MASTER.—It will stand subject to the objection.

Q. What was the amount of those approximately.

Mr. TULLER.—I wish there, your Honor, it seems to me that when there are books and records to show these things we ought not to stand on a conclusion of the witness as to whether this concern was insolvent at that time.

Mr. CRAIG.—This witness knows these things outside of the books. [111]

The SPECIAL MASTER.—You used the word approximately?

Mr. CRAIG.—Yes.

The SPECIAL MASTER.—Why should it be approximately?

Mr. CRAIG.—The assets of this concern is a hundred thousand dollars, and a few thousand dollars makes a very little difference.

The SPECIAL MASTER.—Objection overruled.

A. I should say the rents were in the neighborhood of about a thousand dollars received.

Q. Was that of one or more properties belonging to the company? A. Different properties.

Q. The corporation was not engaged in any business between those two dates? A. It was not.

(Testimony of Fielding J. Stilson.)

Q. You didn't incur any liabilities, that is the corporation didn't incur any liabilities after the 19th day of March?

Mr. TULLER.—Objected to as calling for a conclusion of the witness.

The SPECIAL MASTER.—Objection overruled.

Q. Did it or not? A. Beg pardon?

Q. Did the corporation incur any liabilities after the 19th day of March?

A. Yes, taxes, but no new liabilities in the sense of business liabilities.

Q. Outside of the indebtedness which arose from taxes accruing was there any other liability incurred by the corporation, or did it become liable for any further debt after the 19th day of March?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Same ruling.

A. It did not. [112]

Q. Did the corporation increase its assets in any way by the disposal of any properties or income whatsoever after the 19th day of March and up to the time of the filing of the schedules, outside of the rents?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Same ruling.

A. It did not.

Mr. CRAIG.—Then, I offer the schedules in bankruptcy for the purpose of proving the amount of the liabilities as shown by the schedules at the time of the filing.

Mr. TULLER.—May I look at those schedules?

(Testimony of Fielding J. Stilson.)

Mr. CRAIG.—I think the summary on that first page is correct?

The SPECIAL MASTER.—It is sometimes not, Mr. Tuller.

Mr. TULLER.—Your Honor, I don't know what the legal effect of those schedules is. It seems to me that it is hardly evidence of anything.

The SPECIAL MASTER.—There are authorities for admitting the schedules as well as the order of adjudication in the matter, and the appraisalment. Objection overruled.

Mr. TULLER.—It is understood that the whole schedules are in?

The SPECIAL MASTER.—They are offered.

Mr. TULLER.—I take it they are in for all purposes.

Q. Mr. Stilson, you testified that you made up these schedules yourself? A. I did.

Q. From what were they made? A. What?

Q. From what were they made?

A. The books of the corporation.

Mr. TULLER.—Then, I wish to add a further objection that it appears that it is a document of secondary evidence, and move to strike it out on that ground. [113]

The SPECIAL MASTER.—No, he made them from the other books and it is a summary, and they may be offered in evidence on that ground. You can examine the books, they will be brought here—

Mr. TULLER.—I assumed that you will not change your ruling.

(Testimony of Fielding J. Stilson.)

The SPECIAL MASTER.—It is a summary of the evidence.

Mr. CRAIG.—The objections being made, we are going to bring all the books here; we will have all the books here; to satisfy counsel we will bring the expert accountant here, or we will—

The SPECIAL MASTER.—They can either be brought here or we can adjourn and go across the street. We can go over there to the bank and see them.

Mr. TULLER.—I am certainly not going to stipulate my case away.

The SPECIAL MASTER.—You can go over there and examine them; it will be the same as if they were here. When it is proven, it will be admitted in evidence subject to your cross-examination.

Mr. TULLER.—Do I understand that the books themselves will be considered as offered in evidence?

The SPECIAL MASTER.—No, I don't understand that; when books consist of a great many conflicting accounts and matters, a man who has made an examination of the accounts may make a summary, subject to your right to cross-examine.

Mr. TULLER.—But I don't know that this witness has a right—

The SPECIAL MASTER.—They are going to have Mr. Palethorpe testify, but I won't go to the trouble of bringing all those books here.

Mr. TULLER.—I will go over there. I have no desire to be captious.

The SPECIAL MASTER.—The expert account-

(Testimony of Fielding J. Stilson.)

ant's report is here.

Mr. TULLER.—Mr. Allen just states that the deed to which reference was heretofore made was made on the 15th day of April. May that be considered in? That is the deed from the Fielding J. Stilson Company to Booth and Allen. [114]

The SPECIAL MASTER.—This is a copy of the expert accountant's report which was testified to on the hearing before the Master at the time of the hearing of the special reference on the petition and answers prior to the adjudication.

Mr. TULLER.—May I ask, Mr. Allen, was this statement made from the books?

Mr. ALLEN.—Yes.

Mr. CRAIG.—I think, Mr. Tuller, that from an examination of that report you will be satisfied.

The SPECIAL MASTER.—That is the same one that I acted upon and you may examine it now, because as I assume when Mr. Palethorpe calls here he will testify to its correctness.

Mr. TULLER.—Shall I do it now?

The SPECIAL MASTER.—No, you can take the noon hour.

Q. Mr. Stilson, do these schedules contain a true statement of the various properties held or owned by the Fielding J. Stilson Company at the time of the bankruptcy? A. Do you refer to this paper?

Q. Yes, sir. A. They do.

Q. (By the SPECIAL MASTER.) That is, an accurate list and inventory of the property?

A. They do.

(Testimony of Fielding J. Stilson.)

The SPECIAL MASTER.—Are those properties listed also in the—

Mr. CRAIG.—The expert accountant's report? Yes. Nothing in the schedules that is not in the report except those additional rentals.

The SPECIAL MASTER.—You have then a summary of the information.

Q. Your schedules set out a large number of pieces of real property, all of which were located in the City of Los Angeles, County of Los Angeles, State of California, and I want to know whether every piece of realty which was owned by the corporation was scheduled? [115]

A. It was, to the best of my knowledge and belief.

Mr. TULLER.—I move to strike out the answer as not responsive. It doesn't show that the witness knew of all of the property.

The SPECIAL MASTER.—The motion will be denied; it will stand subject to the motion.

Q. Mr. Stilson, were you familiar with every detail of the assets and liabilities of the Fielding J. Stilson Company?

Mr. TULLER.—That is obviously leading and also calling for a conclusion; object to that upon that ground. I don't—

The SPECIAL MASTER.—Objection overruled. I don't think that as to whether he was familiar was a leading question.

Q. Mr. Stilson, do you know of your own personal knowledge what pieces of property, real property, and what items of personal property the Fielding J.

(Testimony of Fielding J. Stilson.)

Stilson Company owned?

Mr. TULLER.—Same objection.

A. I do.

The SPECIAL MASTER.—Objection overruled.

Q. Among the assets scheduled are a number of bills of exchange or promissory notes found on—in schedule B (2) in the schedules,—do you know the value of those various notes or bills of exchange as it was in March, 1912, and at the time the schedules were filed?

Mr. TULLER.—Object to that as calling for a conclusion of the witness and as incompetent to lay a foundation for expert opinion as to the value.

Mr. CRAIG.—As to whether he knew.

Mr. TULLER.—Conclusion as to whether he knew, an opinion.

The SPECIAL MASTER.—Objection overruled.

Q. Yes or no, do you know the value? A. Yes.

Q. Explain those items and state what the value of each one of them was at that time, and state the reasons why you so state? [116]

Mr. TULLER.—Object to that on the ground that it is incompetent, no foundation laid for opinion evidence; also vague and indefinite in calling for an explanation.

Mr. CRAIG.—It appears that Mr. Fielding J. Stilson appears there as a creditor of this corporation for \$7,000.00 and that he has no credits.

Mr. TULLER.—I insist upon my objection.

The SPECIAL MASTER.—Objection overruled.

Q. As to whether they are bills of exchange or

(Testimony of Fielding J. Stilson.)

promissory notes?

The SPECIAL MASTER.—Objection overruled.

(Question read by reporter.)

A. Do you wish me to go into each item?

Q. Yes, if you please.

A. R. L. Anderson owed \$52,00 to our corporation and we held as collateral 2,000 shares of California Hills stock. My recollection is that the market value of that stock was much less than the loan. This was taken from the books of the corporation, that is, if the man had come in and paid the \$52.00, we would have given him the 2,000 shares.

Q. Mr. Stilson, what I want to get at is, was the note of its face value?

Mr. TULLER.—Same objection. That is leading.

Q. What was the value of the notes, whether or not when you scheduled the \$52.00 as an asset of the corporation, whether it was worth the \$52.00 or not?

Q. (By the SPECIAL MASTER.) What in fact was it worth to take up?

Mr. TULLER.—All my objections go without repeating.

Mr. CRAIG.—It might be put in this way,—I will take the chances of asking objectionable questions and they will go up.

Mr. TULLER.—It will be so stipulated.

The SPECIAL MASTER.—Proceed with each item. [117]

A. The first item of \$52.00 was worth only the value of the market of the California Hills.

(Testimony of Fielding J. Stilson.)

Q. Do you know what that was?

(Figures in pencil on back of page.)

A. I think it was about—

Mr. TULLER.—I object to the witness testifying unless he knows.

Mr. CRAIG.—I am trying to refresh his memory. If you don't remember, go to the next one.

A. Charles Daniels, 6,000 shares of Oleum Development Company, of absolutely no value. The next item, M. and William B. Herriott, notes, absolutely no value.

Q. When you say absolutely no value, do you mean in March, 1912, and has not been since?

A. Yes. William Miller, that 40 Union Oil is an error, it should be 10 shares, \$1,095.00. That was worth the money, was at par about that time. That is a good asset. Mrs. C. C. Redmond, \$485.98, of no value. Elizabeth A. Worth, \$112.50, of no value. E. J. Young, 500 Rescue Eula stock held, \$46.50, probably worth \$20.00. The account of Mary E. Stilson was an open account of \$13,403.01, was of no value because it simply represented money that was advanced to her account in the building of the houses; mine was in the same manner and of \$7,000. F. N. Coffin, of \$480.00, was doubtful.

Q. It might be worth \$480.00?

A. It might be if he would pay it. It is in the hands of the trustee.

Q. When you state that the \$13,403.00 is due as money advanced for building those houses, what do you mean?

(Testimony of Fielding J. Stilson.)

A. It was merely a record of the costs of the houses.

Q. What houses?

A. Her house, 1048 Kensington Road.

Q. That was a house belonging to your mother at the time of the filing of the schedules, no, I mean March 19th, 1912? [118]

A. Yes.

Q. Was that property—did that property belong to the corporation at any time? A. It did not.

Q. Do you remember whether that house and lot belonging to your mother was included in the schedules?

Mr. TULLER.—The schedules speak for themselves.

Mr. CRAIG.—No way in the world of determining that except by examination.

A. No, they are not here.

Mr. CRAIG.—I would state that the property I am inquiring about is lots 34 to 39, inclusive, in Block 15, Angeleno Heights.

Mr. TULLER.—In this city?

Mr. CRAIG.—In this city.

Q. In March, 1912, and after that time and up to the time of the filing of these schedules, did you have any property or means out of which the \$7,000 scheduled there could be made?

Mr. TULLER.—Object to that as a conclusion of the witness. If he wants to ask what his property was—

The SPECIAL MASTER.—Objection sustained.

(Testimony of Fielding J. Stilson.)

Q. What property had you, Mr. Stilson, out of which this \$7,000 could be made during that time, I mean from the 19th day of March up to the time of the filing of the schedules? A. I don't know.

Q. (By the SPECIAL MASTER.) Do you mean you don't know of any?

A. Between the 19th day of March, 1912, and up to the date of the deed to Messrs. Carroll Allen and Willis H. Booth, the title to my property was mine, but I had given my word to Mr. Allen shortly after March 19th to deed this property under certain conditions which were afterwards carried out, but I had no way to realize on that within the time given.
[119]

Q. Isn't it a fact that that property was in your wife's name?

A. Yes, and mine; joint name, I think it was. She joined in the deed.

Q. What was the value of the property?

Mr. TULLER.—Object to that on the ground that there is no foundation laid.

Mr. CRAIG.—I will withdraw that objection, I mean I will withdraw the question.

Q. What was the encumbrance upon the property?

A. You refer to my property or my mother's?

Q. No, yours.

A. Covered by two mortgages in the Pacific Mutual, one for thirty thousand dollars and one for ten thousand.

Q. Do you know what encumbrances were on your mother's property?

(Testimony of Fielding J. Stilson.)

A. That was in the blanket mortgage.

Q. That was in the mortgages which you mention as thirty and ten thousand?

Q. (By Mr. TULLER.) These two mortgages covered these properties?

A. Yes, they could not be released.

Q. You scheduled in schedule B (3) choses in action, a claim of the corporation against the Oleum Investment Company for money advanced, \$11,040.50, was that a collectible obligation?

Mr. TULLER.—Objected to as calling for a conclusion.

Q. Was the Oleum Company a California corporation? A. No, Nevada.

Q. Who was the president?

A. No, president, I was vice-president and manager.

Q. You were vice-president and manager in March, 1912? A. Yes, sir.

Q. Were you familiar with its affairs, assets and liabilities? A. I was. [120]

Q. You lost a good deal of money in that?

A. \$22,000.00.

Mr. TULLER.—Objected to as leading.

The SPECIAL MASTER.—Objection overruled.

Q. Was that claim of \$11,000 due to the Fielding J. Stilson Company collectible, and if so, in what manner?

Mr. TULLER.—Objected to as calling for a conclusion and no foundation laid. I call attention at this time that no unfair advantage may be taken,—

(Testimony of Fielding J. Stilson.)

the question as to whether it is collectible depends upon not only the corporation but whether the stockholders were liable.

Q. What was the value of the indebtedness?

Mr. TULLER.—Objected to as calling for a conclusion, and on the grounds heretofore specified.

Q. Answer the question, if you know?

Q. (By the SPECIAL MASTER.) What was the value of that claim against the Oleum Development Company, that you could sell it for on the market?

A. I believe it had no value at that time.

Mr. TULLER.—What time do you refer to?

Q. You refer to March, 1912? A. Yes.

Q. Did it have any value after that time and down to November?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Same ruling.

A. Not so far as the corporation was concerned.

Q. (By the SPECIAL MASTER.) What do you mean by that, not so far as the corporation was concerned?

A. The Fielding J. Stilson Company.

Q. That is, they could not sell it?

A. Couldn't do a thing with it. [121]

Q. (By Mr. TULLER.) You don't mean that the note didn't have any intrinsic value?

A. I know of none, Mr. Tuller.

Q. Will you kindly go through this list, choses in action, debts due petitioner on open account and state what the value was of each of those, if you know, on March 19th, 1912, and at any time subsequent to that time?

(Testimony of Fielding J. Stilson.)

Mr. TULLER.—Objected to on the ground aforesaid, a conclusion of the witness, and no foundation laid.

The SPECIAL MASTER.—Objection overruled.

Mr. TULLER.—Not a proper case for opinion evidence.

The SPECIAL MASTER.—Objection overruled.

A. Lillian Bailey, rent due \$80.00, no value, non-collectible. J. W. Palmer, \$15.00, very uncertain.

Q. Now, Mr. Stilson, I want the value, if no value state it, and if any value state what the value is?

A. Mrs. C. C. Redmond, money advanced, \$96.00, no value; M. Stevens, rent due, that is hall rent due, no value; A. W. Spurgeon, afterwards paid; William C. Taylor, \$14.25, was, I remember, afterwards paid, Realty Company, money advanced, of uncertain, practically no value at that time.

Q. What was the amount of that?

A. \$2,375.69. It could not be collected.

Q. Did that corporation go into bankruptcy?

Mr. TULLER.—Objected to as incompetent, irrelevant and immaterial and referring to a time subsequent.

The SPECIAL MASTER.—Objection overruled.

A. Went into bankruptcy, yes.

Q. How soon after the 19th of March?

Mr. TULLER.—Same objection, and also not the best evidence.

Mr. CRAIG.—I will bring down the records from the United States Court, if necessary.

The SPECIAL MASTER.—Objection sustained.

(Testimony of Fielding J. Stilson.)

You may answer the [122] question subject to the objection.

Mr. CRAIG.—Don't want it.

Mr. TULLER.—I understand he is allowed to testify.

Mr. CRAIG.—I don't want him to testify.

Q. (By the SPECIAL MASTER.) Do you know when they went into bankruptcy? A. Yes.

Q. (By the SPECIAL MASTER.) When was it? A. January, 1913.

Mr. TULLER.—That answer is subject to the other?

The SPECIAL MASTER.—Yes.

Q. Is that bankruptcy proceeding closed yet?

Mr. TULLER.—Object to that as leading.

Mr. CRAIG.—I want to find out, Mr. Tuller, if this has any value.

Mr. TULLER.—The fact that it went into bankruptcy nearly a year afterwards doesn't prove that it had no value in March.

A. W. F. Palmer, \$142.50, no value, marginal stock transaction, never made good.

Q. There is scheduled in Schedule B (3) C, Sub-division C insurance on office furniture \$500.00; what was that, Mr. Stilson?

A. Represented the furniture of the corporation.

Q. That was insurance? A. Oh, yes.

Q. Was that the amount of the policy, was that an asset?

Mr. TULLER.—That is a conclusion.

Q. Had there been a fire?

(Testimony of Fielding J. Stilson.)

A. No, no fire.

Q. Did you ever collect that \$500.00?

Mr. TULLER.—Objected to as leading and immaterial.

The SPECIAL MASTER.—Objection overruled. There are some things that long experience teaches, especially after fourteen years as [123] referee,—that assets are all collected as far as they are able to collect them. In other words, when they come down to these kind of assets, they are not worth a cent. They have exhausted every endeavor to get what they can.

Mr. TULLER.—When he asks questions that are not proper, I object to them.

Argument by counsel.

Q. What was the value of that item scheduled in your schedules, \$500.00?

A. No value except in the case of fire.

Q. Never had one, did you? A. Never did.

Q. In schedule B (3) continued, the values placed upon those stocks and bonds in your schedules you stated as of April 22d, 1912,—do you remember whether or not the values of those stocks was more or less on that date than on March 19th?

Mr. TULLER.—You are referring to the date of April 22d?

Mr. CRAIG.—They are scheduled as of April.

A. They were more on—they were less—they were more on April 22d than on March 19th.

Q. So that on March 19th, 1912, they were of not any greater value than here stated? A. No.

(Testimony of Fielding J. Stilson.)

Q. You scheduled 140 Amalgamated Oil, \$8,400.00, was that the stock which was purchased from the Staats Company which is the subject of this litigation? A. It is.

Q. You scheduled the stock as belonging to you at that time? A. The corporation, yes.

Q. It had been hypothecated, had it?

A. According to the statement, 60 shares and a due bill, making 200 had been hypothecated. [124]

Q. So that this asset would be offset by a corporation liability? A. It would.

Mr. TULLER.—Why can't we eliminate both asset and liability?

Mr. CRAIG.—It stands as an asset of \$8,400.00. Of course there is a liability.

Q. University Club Holding Company, \$800.00, that was worth that amount at that time?

A. I believe so, yes.

Q. Riverside Home Telegraph Company bonds, \$1,400.00, that was the true value? A. Yes.

Q. So that these assets were of the value stated on April 22d?

A. Yes. There were a few dollars in the bank.

Mr. CRAIG.—I have not gone through every item; those that I didn't question I assume are assets as set forth in the schedules. It is 12:00 o'clock now and I am going up on another matter. Will you continue until this afternoon?

The SPECIAL MASTER.—Do you want to cross-examine him now?

Mr. TULLER.—I might.

(Testimony of Fielding J. Stilson.)

The SPECIAL MASTER.—How long will it take you?

Mr. TULLER.—I don't think very long.

The SPECIAL MASTER.—Then proceed.

Cross-examination.

(By Mr. TULLER.)

Q. You don't know, do you, what property those various parties whose names are listed in Schedule B (2) own?

A. No. I might examine them. I might know some of them.

Q. In your statement that you made a little while ago, you didn't consider whether you knew what property, or any property, [125] that they owned?

A. I knew that we couldn't collect the money. No, I didn't know.

Q. Now, then, coming to the case of Mary E. Stilson, that is the account of \$13,000.00, \$13,403.00, was of no value? I understood you to so testify.

A. She had no means in any way whatever of paying it.

Q. That was money expended for the building of her house advanced to her? A. Yes.

Q. No money wasted so far as you know in the building of the house? A. No.

Q. Didn't you consider that the properties that were covered by these two mortgages, one for thirty thousand and one for ten thousand, were worth in excess of \$40,000.00?

A. They could not be released.

Q. Were not those two properties worth more than

(Testimony of Fielding J. Stilson.)

forty thousand dollars? A. No.

Q. I don't mean the equities in them worth more than forty thousand dollars; were the properties worth more than the mortgages on them?

A. Yes.

The SPECIAL MASTER.—It is something that you don't understand. That blanket mortgage not only covered these two properties but a lot of other property. Mr. Stilson is talking about one thing and you another. He is talking about the blanket mortgage and you are talking about the two houses. You are asking whether or not the two houses were worth \$40,000. The two houses were not worth \$40,000 in themselves. He means the entire property under the mortgage.

Mr. TULLER.—But he testified that the account of Mary E. Stilson was not worth anything. [126]

Q. Now, didn't she have property?

A. She did not.

Q. (By the SPECIAL MASTER.) Were the houses and lots owned by Mary E. Stilson and yourself,—were they themselves worth \$40,000.00?

A. No.

Q. What were they worth? A. \$35,000.00.

Q. What other property was covered by the mortgage?

A. A large number of vacant property, the title to which stood in the corporation.

Q. What in your estimation was the value of those properties?

Mr. CRAIG.—Objected to on the ground that it is

(Testimony of Fielding J. Stilson.)

incompetent. It is cleary incompetent as to whether she was worth anything.

The SPECIAL MASTER.—Objection overruled.

A. According to the price list I presume the property was probably worth \$100,000.00.

Q. Then, in your best judgment the properties covering these two mortgages of \$40,000.00 were worth in the neighborhood of \$100,000.00; they had a mortgage of \$40,000.00 on a \$100,000 worth of property? A. Including my mother's.

Q. Correct. Did your mother have any other property except this house?

A. Except stock of the Fielding J. Stilson Company?

Q. Any other stock? A. No.

Q. Any bonds? A. No.

Q. Personal property?

A. Furniture in the house. [127]

Q. House fairly well furnished, wasn't it?

A. Comfortably, not extravagantly.

Q. Didn't you consider your stock in the Fielding J. Stilson Company worth anything on the 19th day of March? A. I did not.

Q. Didn't you consider at that time the corporation was solvent?

Mr. CRAIG.—I object to that as incompetent, irrelevant and immaterial and calling for a conclusion of the witness.

Mr. TULLER.—He has expressed his opinion that his account was worth nothing. It is cross-examination.

(Testimony of Fielding J. Stilson.)

Mr. CRAIG.—I don't think it is cross-examination that he considered the Fielding J. Stilson Company was insolvent.

The SPECIAL MASTER.—You may answer the question subject to the objection. I think the objection that it is incompetent,—that is the very question that we are to determine here. I am going to sustain the objection, but I am going to let him answer the question.

Q. Did you consider the stock of the Fielding J. Stilson Company worth anything on the 19th day of March? A. I did not.

Q. Did you consider the Fielding J. Stilson Company solvent or insolvent?

Mr. CRAIG.—Objected to as—

The SPECIAL MASTER.—Answer the question.

A. I tried to be as optimistic as possible, but I confess that as I look back it was insolvent.

Q. What did you consider it worth at that time?

A. As I say, I was trying to be optimistic.

The SPECIAL MASTER.—Answer the question.

A. I don't know.

Q. Why did you make an appraisal showing a substantial margin of assets over liabilities when you considered it insolvent? [128]

A. I didn't make the appraisal.

Q. Who made the appraisal?

A. Three realty men here.

Q. Where was this—coming to the item of Oleum Development Company,—coming to the item of Oleum Development Company, money advanced,

(Testimony of Fielding J. Stilson.)

where was that money advanced, in California?

A. In California, yes.

Q. The Oleum Development Company had a large number of California stockholders, did it not?

A. It did, yes.

Q. Do you know whether the Los Angeles California Realty Company was a California company?

A. It was.

Q. It had a number of stockholders, did it not?

A. It had only five.

Q. Were they residents of California?

A. Yes.

Q. (By the SPECIAL MASTER.) Who were they?

A. My mother, my brother, W. H. Anderson, I think Ora Buckley, and myself.

Q. Another Stilson concern, was it?

A. Yes, absolutely.

Q. Have any assets? A. Yes.

Mr. TULLER.—There may be something else I would like to ask.

The SPECIAL MASTER.—We will continue until Tuesday at 10:00 o'clock. [129]

Los Angeles, Cal., April 27, 1915.

10:00 o'clock A. M.

FIELDING J. STILSON, on the stand.

Redirect Examination.

(By Mr. CRAIG.)

Q. Mr. Stilson, I will now renew the question which was asked of you at the last hearing, and will ask you whether or not the schedules in bankruptcy

(Testimony of Fielding J. Stilson.)

filed herein accurately schedule the amount of the indebtedness of the Fielding J. Stilson Company at the time they went into bankruptcy?

Mr. TULLER.—I wish you would make that date a little more specific. What date do you refer to?

Mr. CRAIG.—Just strike out those words “at the time they went into bankruptcy” and add, “the time the schedules were filed on the 27th day of November, 1912.”

Mr. TULLER.—Objected to as irrelevant and immaterial.

The SPECIAL MASTER.—Objection overruled.

A. According to my best knowledge and belief the schedules did.

Q. I believe that you testified, Mr. Stilson, that between the 19th day of March, 1912, and the 27th day of November, 1912, the Fielding J. Stilson Company incurred no further or other liabilities, is that a fact?

A. It is.

Mr. TULLER.—I want that subject to the same objection, not sufficient foundation.

The SPECIAL MASTER.—Same ruling. That is all in here.

Q. The amount of the liabilities as given in the schedules is \$257,760.87, was that the amount of the liabilities approximately, within a thousand dollars, on the 19th day of March, 1912?

(Pencil figures on back of page.) [130]

Mr. TULLER.—Same objection.

A. It was.

The SPECIAL MASTER.—Same ruling.

Mr. CRAIG.—I presume that counsel has exam-

(Testimony of Fielding J. Stilson.)

ined the expert accountant's report and that he is objecting upon the ground that there is no foundation laid or not the best evidence.

The SPECIAL MASTER.—He objects to it because he says that Mr. Stilson is not the one who knows it.

Mr. TULLER.—Objected to as not the best evidence.

Mr. CRAIG.—In order that there shall be no possibility of the status as to this proof, at the last hearing Mr. Tuller was to examine the expert accountant's report and examine the books to ascertain whether it would be necessary to bring the expert here to prove the condition of the books and whether it would be necessary to introduce the books in evidence. Mr. Tuller has objected to the testimony of Mr. Stilson upon the ground that there has no proper foundation been laid. I will ask Mr. Tuller if the schedule of the liabilities as shown by the expert accountant's report and by the books of the Fielding J. Stilson Company, which according to that report amounts on April 25, 1912, to the sum of \$256,682.53, as admitted.

Mr. TULLER.—Well, now Mr. Craig, I don't want to be over technical in this matter, but after I examined those books I knew less than I knew before. I never saw such books. The expert accountant stated in his report that a good deal of the report is taken from information obtained from Mr. Allen and from Fielding J. Stilson, no entries in the books to correspond with lots of it. I don't want to put you to any unnecessary trouble; neither do I want to stipulate my case away. I would suggest that we go ahead

(Testimony of Fielding J. Stilson.)

and perhaps before we get through there will be no necessity of Mr. Palethorpe or the books. [131]

Mr. CRAIG.—I understood from Mr. Allen that he had spoken to you and you said that it would not be necessary to bring Mr. Palethorpe here to-day to prove those items.

Mr. TULLER.—To-day, I didn't want to bring him here. My idea will be to proceed as far as we can. I will certainly endeavor not to bring him here.

Mr. CRAIG.—I have no objection to going through these schedules item by item and asking whether or not the obligation which is scheduled here was an obligation of the company.

Mr. TULLER.—I understand that there have not been anything like the amount of claims filed that are scheduled in that schedule.

Mr. CRAIG.—That is because most of the indebtedness scheduled is secured indebtedness, and of course no proof of debt is necessary.

Mr. TULLER.—Do you know, are you able to tell me, Mr. Craig, whether, outside of the secured indebtedness, there have been claims filed representing the same amount of indebtedness shown in that?

Mr. CRAIG.—I have not figured them up and cannot tell you.

Mr. TULLER.—I have a list which I got from the bank yesterday; it appears to be very much less, twenty-six thousand allowed claims, and I didn't figure up the rest; certain claims which were irregular, but it don't look like there was anything like the amount. Can't we go ahead with the rest of the case, and if necessary we can bring Mr. Palethorpe here,

(Testimony of Fielding J. Stilson.)

and if not we can remedy that—

The SPECIAL MASTER.—I understand the record shows that Mr. Stilson himself says that according to his own knowledge the indebtedness was at least two hundred fifty thousand dollars.

Mr. TULLER.—I don't know whether he so testified from his own [132] knowledge or recollection of the books.

The SPECIAL MASTER.—That was before he was shown the schedules.

Q. Mr. Stilson, you were the general manager of the corporation? A. I was.

Q. Did you know approximately the amount of your indebtedness? A. I did.

Q. On the 19th day of March, 1912, what was the amount of that indebtedness?

A. About two hundred and fifty to sixty thousand dollars, as shown by the schedule or our accountant's report, Palethorpe's.

Q. As general manager and president of the company you knew that outside of those schedules and the report?

Mr. TULLER.—It seems to me that is pretty leading, your honor.

The SPECIAL MASTER.—That is leading.

Mr. TULLER.—While we are on that point I would like to ask a question.

The SPECIAL MASTER.—Proceed.

Q. (By Mr. TULLER.) When you make the statement as to the amount of your indebtedness, are you speaking of your independent recollection or re-

(Testimony of Fielding J. Stilson.)

lying on your books? A. Both.

Q. (By Mr. TULLER.) In part you are relying on your books? A. Yes.

Q. (By Mr. TULLER.) If at that time you had in your head the items of indebtedness, you are not able now to recall them independent of your books?

A. I think that question is best answered by the schedules.

The SPECIAL MASTER.—He wants to know if you have an independent recollection, and if you went over each item, if you could testify as to its being correct.

A. I didn't go over it at that time on account of my illness.

The SPECIAL MASTER.—The question is, could you do it now? Could you say whether an item was correct? [133]

A. Yes, if I had those items, if I am permitted to use the schedules and that.

Q. By the "schedules" you mean the schedules filed, and by "that" you mean the report of Mr. Palethorpe? A. Yes.

Q. You and your brother assisted in making this report?

A. My brother and I, I recovered before Mr. Palethorpe made up the report, and returned to my work and assisted in making that report; Mr. Hargreaves, my bookkeeper, also assisted.

Q. (By Mr. TULLER.) The point I want is, do you remember, independent of your books, all of the accounts owed on March 19th, 1912?

(Testimony of Fielding J. Stilson.)

Mr. CRAIG.—I think that is immaterial. I couldn't attempt to tell you what I owed.

A. I could not give you item for item, but in a general way I know that we were involved to about that amount.

Mr. TULLER.—You made a finding on that. That is the finding on which the adjudication in bankruptcy was made.

The SPECIAL MASTER.—You may save the point.

Mr. TULLER.—It is a question more or less of testing the accuracy of his recollection.

Q. Mr. Stilson, when, with relation to the 19th of March did your company first find itself in financial difficulty?

Mr. TULLER.—Objected to as irrelevant and immaterial, and also too vague and indefinite as to what is meant by finding himself in financial difficulty.

Mr. CRAIG.—Preliminary question, I will follow it up.

The SPECIAL MASTER.—Objection overruled.

A. To the best of my recollection, about the 12th or 13th of March, 1912.

Q. Now, in what financial difficulties did you find yourself at that time? [134]

Mr. TULLER.—Same objection may be considered all through?

The SPECIAL MASTER.—All right.

A. Unable to meet the immediate necessities of the business owing to the failure to obtain certain funds promised.

(Testimony of Fielding J. Stilson.)

Q. How was that financial difficulty evidenced in your business?

A. By some checks that had been given for securities and had been unable to be paid on account of not sufficient funds.

Q. Have those checks gone to protest?

A. I am not certain of that.

Q. Had they been presented at the bank and refused payment? A. They had.

Q. What was the amount of them, approximately?

A. I think twenty thousand dollars, about.

Q. Was the Fielding J. Stilson Company a member of the stock exchange of this city at that time?

A. No, I was, as president, represented.

Q. You were personally a member of the stock exchange representing the company?

A. The Exchange recognizes only individuals, not corporations.

Q. The members of the Exchange then are made up of individuals representing themselves and individuals representing the various corporations?

A. Yes.

Q. And you were the representative of your corporation? A. I was.

Q. Was any action taken by the Stock Exchange with relation to the financial affairs of yourself or the Fielding J. Stilson Company?

Mr. TULLER.—Objected to as irrelevant and immaterial and no time specified.

Mr. CRAIG.—I will follow that up by finding out. I don't know the time. [135]

(Testimony of Fielding J. Stilson.)

The SPECIAL MASTER.—You may answer, yes or no.

A. Some action was taken.

Q. When?

Mr. TULLER.—Same objection, irrelevant and immaterial.

The SPECIAL MASTER.—Of course it would not be material unless it was known to the defendant.

Mr. CRAIG.—I am going to try to show.

Mr. TULLER.—Then, subject to being connected up?

The SPECIAL MASTER.—Yes.

A. I, as representative, was suspended, as representative, on the 20th of March, 1912.

Q. Was any member of the William R. Staats Company a member of the Exchange?

A. They had a representative there.

Q. Who?

A. I believe the membership was represented by Mr. John E. Jardine.

Q. Mr. Jardine who is present here to-day?

A. Yes. The membership stands in Mr. Jardine's name. And they are represented by Mr. Brooks on the Exchange. He is what is commonly called the floor man, as I understand it.

Q. These checks that were bad were given by your company for what? A. For securities.

Q. Did they represent payments made as a result of transactions held on the Stock Exchange?

Mr. TULLER.—That is leading.

The SPECIAL MASTER.—Yes or no.

(Testimony of Fielding J. Stilson.)

A. No. Well, I will explain, your honor. They did not go through, the business was not conducted through the clearing house, but the stocks were purchased, what is known as off board. The purchase may have been agreed upon on the floor during hours but the checks were delivered to officers of the respective payees. [136]

Q. (By Mr. TULLER.) It was not a deal that went through the stock exchange as official deals, as on board deals?

A. They may have been. It was customary at that time to clear transactions off board.

Q. Did they represent transactions with the members of the stock exchange?

Mr. TULLER.—I think counsel ought to ask the facts and not lead the witness.

The SPECIAL MASTER.—All right, Mr. Craig.

Q. Did they or not represent transactions with the members of the stock exchange? I am not leading the witness. I think the question is proper.

The SPECIAL MASTER.—Try and confine yourself to in the first instance finding out what the facts were with reference to those checks.

Q. Did those transactions that involved the giving of those checks that you have mentioned take place with members of the exchange or with nonmembers?

A. With members of the exchange or their direct representatives.

Q. Did you have any transaction at about that time, just prior to the 19th of March, with William R. Staats Company? A. I did.

(Testimony of Fielding J. Stilson.)

Q. What was the date?

A. I think the purchase of the 200 shares Amalgamated was on the 12th or 13th of March, 1912.

Q. State the transaction?

A. I purchased from William R. Staats 200 shares of Amalgamated Oil, I think \$60.00 a share.

Q. That will be \$12,000.00.

A. Yes. There was delivered to me 50 shares of stock itself and a due bill,—no, 60 shares of stock itself and a due bill [137] commonly given to brokers, fellow members of the exchange, for 140 shares. That due bill, together with the stock was deposited—

Mr. TULLER.—I object now to what the parties may have done, to a recital of something that did not transpire between this man and the Staats Company, on the ground that it is between other parties. He is starting to relate what he did.

Mr. CRAIG.—I think the whole transaction is perfectly material.

The SPECIAL MASTER.—The deposit of the stock with somebody else, the Citizens' National Bank, has nothing to do with the matter. The matter is confined simply to transactions between himself and Mr. Jardine or the Staats Company, what was the transaction with them, not with somebody else.

Q. The check which was tendered to this firm was payable to William R. Staats Company?

A. Yes, made payable to them. It was not met and it was returned.

Q. That was the check for \$12,000.00? A. Yes.

(Testimony of Fielding J. Stilson.)

Q. Then, what was done?

A. As I remember I—either I went to Mr. Jardine's office to see him or he telephoned.

Q. What day?

A. It was Saturday which was either the—I would have to look at the dates of the calendar to observe,—state that. It was Saturday before the 19th of March, 1912, so it must have been Saturday, the 16th of March, or 15th.

Q. How many days was it subsequent to the 12th when you gave the check?

A. One or two days. The date of that check may have been the 14th. I am not certain. The record will show it.

Mr. CRAIG.—Have you that check, Mr. Tuller?
[138]

Mr. TULLER.—Yes.

Mr. CRAIG.—May I see it?

Mr. TULLER.—You may but I would rather the witness did not see it for the present.

Q. You think it was on the Saturday after the giving of the check? A. Yes.

Q. Had any part of the check been paid up to that time? A. No.

Q. What happened, state the conversation between you at that time?

A. I discussed with Mr. Jardine the situation.

Mr. TULLER.—Well, now, if your honor please, this—

The SPECIAL MASTER.—State what you said to Mr. Jardine and what he said to you?

(Testimony of Fielding J. Stilson.)

A. As I remember, I told him I felt sure I could make the item good.

Q. What did he say?

A. As I remember, he said he would give me time, help me in any way he could.

Q. Did you tell him anything with relation to any other checks at that time?

Mr. TULLER.—I object to counsel suggesting this important conversation, suggesting about it to the witness; he should ask what was stated by Stilson and what was stated by anybody else.

The SPECIAL MASTER.—I think that is proper. Let him state all that took place.

Q. Was there anything else stated between you and him with relation to the check which you had given him? A. There was.

Q. State what it was?

A. Mr. Jardine, as I remember, called at my office Monday morning following Saturday. [139]

Q. Let us confine ourselves to the Saturday conversation, Mr. Stilson, first?

A. I am not certain as to the conversation I referred to, whether it took place on Saturday or Monday.

Q. Well, you saw him again on Monday?

A. He called at my office with Mr. Coggeshall.

Q. What is that last?

A. He called at my office with Mr. Coggeshall.

Q. State what was said at that time?

A. I—of course it has been so long ago that I cannot absolutely give statements of what was said. I

(Testimony of Fielding J. Stilson.)

believe there is a statement or record of that conversation.

Q. (By the SPECIAL MASTER.) Testify as near to your recollection as you can?

Q. Give the substance of it, Mr. Stilson? I believe you said you did not remember whether some part of this conversation took place on Monday or Saturday. I want you to state the conversation, and if you can, state which day it occurred?

A. I am certain it was Monday that Mr. Jardine and Mr. Coggeshall called at my office and we discussed the situation.

Mr. TULLER.—I object to that.

Q. (By the SPECIAL MASTER.) State the substance of what was said?

A. I reiterated the statement that I would be able in my judgment to come out of the situation all right, and I informed Mr.—

Q. (By Mr. TULLER.) State what you said?

A. Mr. Jardine asked, or Mr. Coggeshall asked, if I had other items and I said I did, that is, I had other checks that had been turned down. I assured them at that time that I would do everything to protect them.

Q. Did you at that time tell them how many checks had gone bad? A. I believe I did.

Q. Do you remember anything further that was said at either of those conversations? [140]

A. My recollection is that they said they would wait till to-morrow, give me another day, extend the time for making good the check.

(Testimony of Fielding J. Stilson.)

Q. Was anything said at either of those conversations by you as to how you would make good?

A. Yes.

Q. Well, state what was said?

A. I had made a tentative transaction for the sale of some real estate.

Q. (By Mr. TULLER.) Are you relating facts or what you told them. A. I am relating facts.

Mr. TULLER.—The question is what you said.

The SPECIAL MASTER.—Mr. Stilson, not the fact that you had made a tentative transaction, but what you told them.

A. Yes, I told them I had made a tentative proposition which would bring me \$10,000.00 cash and that I would, upon receiving this money, which I expected the next day, take care of their item first.

Q. Do you remember when you next saw anybody connected with the William R. Staats Company?

A. I believe it was the following Tuesday, the 19th of March, 1912.

Q. Did you not see anyone connected with the Staats Company between those dates?

Mr. TULLER.—They were successive dates.

A. It was possible I did.

Q. Did you mean the following day when you said Tuesday?

A. I meant the following day. As I remember I called at Mr. Jardine's office.

Q. State what was said then?

A. I,—as I remember, I said to Mr. Jardine that I had not yet received the \$10,000 and that I felt

(Testimony of Fielding J. Stilson.)

uncertain as to the immediate future for the reason that I had been advised that my transaction [141] had failed of consummation. That information was conveyed to me Monday evening late, and on Tuesday I called at Mr. Jardine's office.

Q. What did he say?

A. Something as to how I could meet it or what I was going to do about it, and I said I would do everything within my power to protect them and proposed to give them collateral in the nature of equities on certain real estate of the corporation. Mr. Staats said to me that he thought that would be all right if the equity was as represented. Mr. Coggeshall was there, either called into the conversation or was there, I am not certain, but the arrangement was made between Mr. Coggeshall and myself to inspect this property and an appointment agreed upon to go that afternoon.

Q. What time of day was it when you called at the office of the William R. Staats Company?

A. I should say half past ten or eleven.

Q. What time was the appointment made to go and inspect the property?

A. I think half past two or three in the afternoon. I then kept that appointment with Mr. Coggeshall and we went out to see the property.

Q. What kind of a conveyance did you take?

A. Automobile

Q. Whose? A. Mine.

Q. Did you call at the office of the William R. Staats Company and get Mr. Coggeshall?

(Testimony of Fielding J. Stilson.)

A. Yes.

Q. What did you do then?

A. We went to review the property and I showed Mr. Coggeshall the individual lots that I proposed to give him or rather to be covered by the trust deed. [142]

Q. What had been said about a trust deed before that?

A. That was agreed upon. It was to be secured by a trust deed.

Q. Who suggested this trust deed?

A. I think Mr. Jardine did, because there was a first mortgage on the property. After inspecting the property we returned—

Q. How long were you inspecting the property?

A. About an hour and a half.

Q. How many properties did you inspect?

A. I have forgotten, anywhere between six and a dozen.

Q. Did you inspect any property except that that was included in the trust deed afterwards?

A. No, only those in the trust deed.

Q. Did you tell him the value of the property?

A. I gave him my list of the property showing what we were asking for the property.

Q. Do you remember how much that was, approximately?

Mr. TULLER.—I object; the list is the best evidence if it is obtainable. There may be copies of the listings.

The SPECIAL MASTER.—The trustee has al-

(Testimony of Fielding J. Stilson.)

ways had a list; that, as I understood, was the list that we went by, is that a fact, Mr. Stilson?

A. Yes, filed with the trustee.

Mr. TULLER.—If it is important you can get it from them.

Mr. CRAIG.—I don't think the question is objectionable. I am not asking for the contents of the list. I am asking him if he knows approximately what he told Mr. Coggeshall the value was.

Mr. TULLER.—He said he gave him a list.

Q. (By the SPECIAL MASTER.) What did you say about it?

A. I informed Mr. Coggeshall that some of the properties were covered by a mortgage to the Pacific Mutual Life Insurance Company and other of the properties included in the trust deed were [143] covered by other minor mortgages, smaller mortgages to other people, not the Pacific Mutual, and, as I remember, the property as represented by the trust deed—

Mr. TULLER.—Well, now, this isn't something you told him?

A. I told him, as I remember, that the property represented by the trust deed was probably worth, that is the equity, from twenty to twenty-five thousand dollars.

Q. Had any part of that \$12,000 check been taken care of in any way up to that time? A. No.

Q. Well, what happened after that?

A. We returned to the Staats Company's office and—

(Testimony of Fielding J. Stilson.)

Q. About what time did you reach the office?

A. Half past four, and Mr. Coggeshall reported in my presence to Mr. Jardine that the representations made by myself were correct and that the property was in his judgment, so he stated in my presence, of the value—

Mr. TULLER.—I don't understand; I object unless there is some reason shown of the conversation between Mr. Jardine and Mr. Coggeshall.

The SPECIAL MASTER.—Objection overruled.

Q. Proceed, Mr. Stilson.

Q. (By the SPECIAL MASTER.) What Mr. Coggeshall said in your presence to Jardine?

A. He said that.

Q. What did he say?

A. That the transaction was satisfactory. My brother and I then signed the instrument, the trust deed.

Q. Will you,—what was done after this conversation?

A. Oh, we proceeded to the Title Insurance and Trust Company.

Q. At whose suggestion?

A. Mr. Coggeshall's. [144]

Q. You left the office of the William R. Staats Company and went to the Title Insurance & Trust Company? A. Yes.

Q. At Franklin and Broadway? A. Yes.

Q. What time did you reach there?

A. Twenty minutes to five.

Q. What occurred at the Title Insurance and Trust Company's office?

(Testimony of Fielding J. Stilson.)

A. As I remember, this deed was prepared.

Q. Who prepared the deed of trust?

A. The Title Insurance and Trust Company or some clerk.

Q. While you were there—what is your brother's name? A. Carroll H. Stilson.

Q. What is his relation to the Fielding J. Stilson Company? A. Secretary.

Q. Was he there? A. No.

Q. Well, the trust deed was prepared by the Title Insurance & Trust Company; did they also prepare the note? A. I believe so.

Q. That note was for \$3,870.00? A. Yes.

Q. Why was it for \$3,870.00 and not for \$12,000.00?

Mr. TULLER.—Objected to as irrelevant and immaterial and a conclusion of the witness.

The SPECIAL MASTER.—Objection sustained.

Q. Why was it not the amount of the check?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Objection sustained.

[145]

Q. State the conversation that occurred between you and the William R. Staats Company or any representative with reference to the amount that should be in this deed of trust?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Objection overruled.

A. As I remember, they desired to be—

Q. Just state what was said?

A. I cannot answer.

(Testimony of Fielding J. Stilson.)

Q. (By the SPECIAL MASTER.) Give the substance of it?

A. The substance was that the William R. Staats Company wanted to be secured only for the 60 shares of stock. They didn't recognize the due bill.

Q. By the SPECIAL MASTER. State whether or not that amount was the amount of the due bill.

A. Yes, this amount.

Q. (By the SPECIAL MASTER.) Of the 60 shares of stock?

A. Represented, as I remember, \$3,600.00 for the stock and certain charges, trust charges.

Q. What was the 60 shares of stock taken at, at what figure?

A. As I remember, it was sixty or sixty-two. I am not certain. The check would show.

Q. The balance of the \$3,870.00 was made up by the charges of the trust company for the—acting as trustee in the trust deed?

Mr. TULLER.—Objected to as leading and suggestive.

The SPECIAL MASTER.—Objection sustained.

Q. What was the total amount of the account?

Mr. TULLER.—He said he didn't remember.

The SPECIAL MASTER.—It is in the record already that it was made up of the value of the stock, the 60 shares, and the charges of the company, and he thinks the stock was sixty or sixty-two dollars, but the check will show. [146]

Q. (By the SPECIAL MASTER.) What check will show?

(Testimony of Fielding J. Stilson.)

A. The check would not show. I didn't understand the question, your Honor. The check was for \$12,000 and the trust deed was for \$3,870.00.

Q. This trust deed was for the value of the stock plus certain charges—what charges?

A. Charges that are usually made by the Title Insurance & Trust Company for handling trust deeds.

Q. Was the note prepared by the Trust Company?

A. I believe so.

Q. After it was prepared was anything said about an abstract or certificate of title by any body?

A. No, except my statement that I made to them that the property was covered by those mortgages. I didn't offer any certificate. They didn't ask for one.

Q. Was any abstract or certificate demanded of you to show the title to the property? A. No.

Q. After the trust deed and note was prepared, then what was done?

A. Mr. Coggeshall and I returned to the office of William R. Staats Company and I called by brother in and we signed the instrument.

Q. Where was your brother?

A. In our office, 115 W. 4th Street.

Q. Did you telephone to him or call for him?

A. I think we telephoned.

Q. Were the note and the trust deed signed at the office of the William R. Staats Company?

A. As I remember it, yes. My memory is not absolutely clear on that, but I know we signed it

(Testimony of Fielding J. Stilson.)

after it was prepared, as I remember, in the office of the William R. Staats Company. [147]

Q. The corporate seal was placed upon it?

A. Yes. It was signed in the office of one of the two companies, that is in the Fielding J. Stilson Company or the Staats Company; we may have brought the seal in.

Q. Do you know where the seal was placed upon the instrument?

A. I perhaps correct myself on that. On the general idea that the seal of our corporation was kept in our office, it may be that the trust deed was brought into our office.

Q. Now, Mr. Stilson, are you certain that it was not signed at the Title Company?

A. I am not certain, absolutely. I was in such a condition at the time that my memory was not clear as to where that was signed.

Q. Did you deliver the note and the mortgage to a representative of the William R. Staats Company?

A. I did.

Q. Do you remember whom?

A. I think to Mr. Jardine or Mr. Coggeshall.

Q. What was said by you to them with reference to the other checks outstanding, if anything, on that day? A. Nothing.

Q. Was anything said by any representative of the William R. Staats Company with relation to the other checks?

The SPECIAL MASTER.—Answer the question.

A. Nothing. You refer to Tuesday?

Q. Yes? A. Nothing?

(Testimony of Fielding J. Stilson.)

Q. Did they inquire of you at any time whether—

Mr. TULLER.—I object to this continual suggestion; as soon as a question is asked it is suggested to the witness. It seems to me my patience has reached the limit.

The SPECIAL MASTER.—You sat still and got the answers. I don't think Mr. Craig knows anything about it. I said before you should [148] find out all that was said without leading the witness, and I think you should.

Mr. CRAIG.—This witness has testified to all that he remembered of those two conversations. He hasn't been asked as to whether that was all that was said.

The WITNESS.—That was all that was said. I went home and was ill.

The SPECIAL MASTER.—We will adjourn now until 2:00 P. M. [149]

Los Angeles, California, April 27, 1915,
2:00 P. M.

FIELDING J. STILSON on the stand.

Redirect Examination (Continued).

(By Mr. CRAIG.)

Q. Have you detailed the conversations, Mr. Stilson, as far as you remember them, that occurred between you and the representatives of the Staats Company concerning this transaction?

A. You mean the ones I referred to this morning?

Q. Yes, sir, at the times mentioned this morning.

A. I didn't hear the first part of that question.

Q. Have you detailed all of the conversations—

(Testimony of Fielding J. Stilson.)

A. Yes, I have.

Q. You testified this morning that you informed the Staats Company, or their representative, concerning the other checks that had gone bad, state whether or not at any subsequent conversation these were again referred to between the parties?

Mr. TULLER.—I object to that as irrelevant and immaterial, and relating to a time subsequent to March 19th.

Mr. CRAIG.—I will add, “and before the giving of the trust deed?” A. I did.

Q. What was said, and to whom, and at what time?

A. As I remember—

The SPECIAL MASTER.—Give the persons to whom you said it to and the time and the place.

A. May I be permitted to qualify? As I remember, I said to Mr. Jardine on Monday and on Tuesday at the two stated interviews that there were other checks out that I could not meet.

Q. When the trust deed and note were executed to whom did you deliver them? [150]

A. The William R. Staats Company.

Q. What person?

A. I believe Mr. Coggershall.

Q. Was Mr. Jardine present?

A. I am not certain.

Q. At the final interview with Mr. Jardine what was said?

Mr. TULLER.—I do not understand what interview you refer to as the final interview.

Mr. CRAIG.—The last one prior to the 19th of March, 1912.

(Testimony of Fielding J. Stilson.)

A. On the 18th of March, which was Monday, I said to Mr. Jardine that I would protect them in every way possible by giving them a trust deed on the equities in the properties, and he said that if the value was there as indicated by me that the arrangement would be satisfactory. Mr. Jardine made that statement to me.

Q. What statement, if any, was made to you by Mr. Coggeshall at the time that you delivered the trust deed to the company?

Mr. TULLER.—I object to statements made by Mr. Coggeshall on the ground that it does not appear that Mr. Coggeshall had any authority to bind the defendant William R. Staats Company by conversations or matters of fact; so far as appears now he was simply an appraiser directed to go out and look over the property; that is not a captious objection because as a matter of fact he had no right to enter into any negotiations for the Staats Company, as I understand it.

Mr. CRAIG.—He was appointed by the Staats Company to close this matter up.

Mr. TULLER.—He was the agent, as I might be an agent, to see to the details between Mr. Jardine and Mr. Stilson, that is my understanding of the situation; that is certainly all the evidence shows to this point. [151]

The SPECIAL MASTER.—The objection will be sustained until you lay some further foundation.

Q. (By the SPECIAL MASTER.) Mr. Stilson, what—did you say anything to them about the amount of those other checks that were outstanding?

(Testimony of Fielding J. Stilson.)

A. I believe that I did.

Q. (By the SPECIAL MASTER.) What did you say?

A. I remember stating that there were a number of checks amounting to perhaps eight or ten thousand dollars more than their check that I could not meet at the immediate time.

The SPECIAL MASTER.—Proceed, Mr. Craig.

Q. I am going back to the schedules in bankruptcy and ask you a few questions with relation to some items that I overlooked,—

Mr. TULLER.—Let me ask at this time—pardon the interruption—there have been various references to the Palethorpe report. Has that been offered in evidence?

Mr. CRAIG.—No, sir, I have been trying to get you to stipulate that it was a correct statement of the assets and liabilities.

Mr. TULLER.—Maybe I shall, I certainly won't object if you admit it was a true statement of the assets. If you will admit that the appraisement was the appraisement of persons well qualified, I will admit it. You know that to be a fact.

Mr. CRAIG.—I know that is not a fact. Anybody that would appraise property at those values is certainly not qualified. Argument by counsel.

Q. In your schedules, Schedule B (2), you schedule machinery—office furnished and fixtures located at 314 H. W. Hellman Building, of the value of \$1,185.63, how did you arrive at that valuation?

Mr. TULLER.—Objected to as irrelevant and immaterial—I will withdraw that.

(Testimony of Fielding J. Stilson.)

A. Why, the cost.

Q. Do you know what they were worth?

A. No. [152]

Mr. TULLER.—I object to the witness—

The SPECIAL MASTER.—He says he doesn't know.

Mr. CRAIG.—I presume it will be stipulated that they weren't worth any more than they cost?

Mr. TULLER.—You have been so kind in your stipulations to-day that I will do that.

Q. You scheduled \$933.88 in the Hibernia Savings Bank, \$5.00 in the Commercial National Bank, \$4.64 in the First National Bank, and \$1.79 in the Merchants National Bank, what did that represent?

A. Cash.

Q. On hand?

A. Except the Hibernian, there was an attachment on that, not negotiable.

Q. But it was cash belonging to the company?

A. Yes.

Q. But which had been attached and you could not use it? A. Yes.

Q. How long have you been a member of the stock exchange, Mr. Stilson?

A. I believe I was elected in 1903 or 4.

Q. Were you familiar with the value of seats on the stock exchange in 1912 from March to November? A. Yes.

Q. You had a seat on the exchange at that time?

A. Yes.

Q. Why did you schedule that seat on the Exchange as an asset of the corporation?

(Testimony of Fielding J. Stilson.)

A. I felt that it was an asset of the corporation.

Q. You felt that you were holding the seat as a mere trustee of the corporation? A. Yes.

Q. And that was a real asset of the corporation?
[153]

A. Yes.

Q. What was its value?

Mr. TULLER.—I don't believe there is sufficient foundation laid for that.

The SPECIAL MASTER.—Objection overruled. You can cross-examine.

Q. What was the value, Mr. Stilson?

Mr. TULLER.—You refer to March, 1912?

Mr. CRAIG.—Yes, on March 19th, 1912.

A. I have forgotten, the seat was sold—

Mr. TULLER.—I object to what the seat was sold for at a subsequent time.

Mr. CRAIG.—What it was sold for is not evidence of its value, I suppose.

A. Well, say \$1,500.00, but I am guessing at that.

Mr. TULLER.—What does the schedule show?

Mr. CRAIG.—\$1,500.00.

Q. You schedule in schedule B (3) certain stocks and bonds, that was your business dealing in stocks and bonds was it? A. A real asset.

Q. You were familiar with the market price of stocks and bonds at that time, in March, 1912?

A. Yes.

Q. You scheduled 15 shares of San Diego Home at \$100.00, and you state that it is hypothecated to M. D. Spalding for \$750.00, what was the value of that stock?

(Testimony of Fielding J. Stilson.)

A. There was 80 shares of University Club Holding Company together with it. The value of the San Diego was, I think the market was \$7.00 a share, not over \$7.00 a share.

Q. One share of Home Telephone preferred which you scheduled at \$30.00?

A. That was the market quotation. [154]

Q. That was the market value of it?

A. Could be sold for that money.

Q. You schedule one share of Los Angeles Bond & Mortgage Company and apparently do not carry out the value? A. No value whatever.

Q. 140 Amalgamated Oil which you schedule for \$8,400.00, was that the Amalgamated which you got from the Staats Company?

A. That was the due bill I got from the Staats Company.

Q. (By the SPECIAL MASTER.) You didn't give up that due bill that night when you gave the trust deed?

A. It was turned over as collateral to Lateau; it was in their possession.

Q. At the time you settled with Staats? At the time Staats took this trust deed? Yes?

Q. Then, you claim that that due bill was an asset of the company?

Mr. TULLER.—I object to what the witness claimed, not a matter of fact, important in this case.

Mr. CRAIG.—Strike that question out.

Q. Was that an asset?

Mr. TULLER.—Objected to as calling for a conclusion.

(Testimony of Fielding J. Stilson.)

The SPECIAL MASTER.—Answer the question.

A. It was.

Q. You say it had been used as collateral security on some of its obligations? A. Yes.

Q. You scheduled 210,000 shares of Oleum Development Company and you place no value in the schedules after that, was that stock of any value?

A. None whatever.

Q. I believe you testified that the University Club Holding Company stock was worth the \$800.00?

A. Yes. [155]

Q. 10 Santa Monica Bay Home Telephone Company which you schedule at \$50.00, what was the value of that?

A. The market value of that was \$5.00 per share, that is, it could be sold for that.

Q. \$100.00 Los Angeles County Club Bond, what was the value of that?

A. The bond was probably worth that.

Q. 70 Johnnie Mining & Milling Company, \$5.60?

A. That was the market value.

Q. 500 Bonnie Claire Mining Company scheduled at \$10.00? A. The market value.

Q. You place no values after 1,000 McKittrick Investors Oil Company, 3,000 Goldfields Eureka Company, 6,000 Cleveland Oil Company and 6,000 Midway Union Oil Company? What were the values of those various stocks? A. Didn't have any.

Mr. TULLER.—Is that the company that has since become rather valuable, the Midway Union?

A. I don't know.

(Testimony of Fielding J. Stilson.)

Q. \$3,500.00 Riverside Home Telegraph Bonds, 7, which is scheduled at \$1,400.00, what was the value of that? A. \$1,400.00.

Mr. CRAIG.—That is all. Take the witness.

Recross-examination.

(By Mr. TULLER.)

Mr. TULLER.—At this time, your Honor, while I think of it, I want to make a statement which in fairness I probably should have made earlier. At the time the application was made for reference, we opposed it on the ground that it ought to be tried before the other court; the order being made you would have no discretion except to try the case, but I do not want to waive [156] any right in hearing us before the Court. I think I am right in thinking you would have no preference but to try the case, and there is therefore no need to make a formal objection.

The SPECIAL MASTER.—No.

Mr. TULLER.—Our objection was not at all to the man who would try the case but simply to jurisdiction.

Q. Now, Mr. Stilson, what was your mental condition at the time, mental and physical condition, along about the 18th and 19th of March, 1912?

A. Bad.

Q. What was your condition on the 20th?

A. Worse.

Q. It is a fact, isn't it, that you were taken ill on or about the 20th and taken to your bed?

A. The 19th.

(Testimony of Fielding J. Stilson.)

Q. Out of your head? A. Practically, yes.

Q. How long?

A. For some little time, for four or five days.

Q. You were ill for how long?

A. Ten or twelve, that is around the house, not well probably for some six months.

Q. It was some months before you entirely recovered? A. Several before I was myself again.

Q. You have in your recitals that occurred on the 18th and 19th and 16th of March, 1912, *have* stated according to your best recollection the things that occurred? A. Yes.

Q. Now, your recollection of this event is not as clear as it might be, isn't it somewhat doubtful on some of the points? [157]

Mr. CRAIG.—I think that is an unfair question, I object to it as incompetent, irrelevant and immaterial, unless the witness is directed to certain conversations. The question might well be answered yes by anybody.

The SPECIAL MASTER.—Mr. Craig, that may be true if it went over a long period of time. I don't think they should be precluded from asking that as a general question.

Mr. TULLER.—You can answer that, yes or no.

A. Yes.

Q. What was the answer?

The SPECIAL MASTER.—Read the question.

Question read by reporter.

A. On some points, yes.

Q. Isn't your recollection somewhat doubtful on the recitals of the statements you stated this morn-

(Testimony of Fielding J. Stilson.)

ing that you made to Mr. Jardine?

A. I believe not, no.

Q. Is it clearer on this than on other matters, or do they stand on the same basis?

A. Clearer on those.

Q. Are you able to state the date on which you purchased the stock from the Staats Company?

A. The 15th of March, 1912.

Q. What information refreshed your recollection?

A. I made the arrangement to buy it on the 14th. I gave the check on the 15th.

Q. What has refreshed your recollection on which you have changed your statement since this morning that it was the 12th or the 13th?

A. An observation of the check.

Q. Your statement now is based on the check and not on your independent recollection, is that correct?
[158]

A. The date of the check corrected in my memory the transaction.

Q. Do you remember the amount you paid per share for that stock?

A. It was between sixty and sixty-two dollars per share.

Q. And are you quite positive of the statement which you made positively this morning that the note which was executed was to cover the price of the stock actually delivered to you, plus certain charges of the Title Insurance & Trust Company?

A. I believe that is correct.

Q. You are just as positive of that, are you as you

(Testimony of Fielding J. Stilson.)

are of any of the other matters? A. Yes.

Q. Now, Mr. Stilson, isn't it a fact that the price of that stock was actually \$64.50 a share?

A. I will admit that, Mr. Tuller.

Q. I don't want you to admit that. Now then, you got sixty shares of stock, didn't you, actually delivered to you? A. Yes.

Q. Now, then, 60 shares at \$64.50 makes \$3,870.00? I will ask you to figure it out to be sure.

A. Yes.

Q. Now, then, are you just as sure as you were when you executed the note for \$3,870.00, that it was the amount of the shares actually delivered to you, including costs?

A. That was my recollection at the time.

Q. You think now that you are mistaken?

A. I do.

Q. Don't you think it possible that in view of the mistake about those two matters, the price of the stock and what that note covered, don't you think it possible you were mistaken about some of the things you recall as having told Mr. Jardine?

A. Possible, not probable.

Q. Is it possible?

A. Anything is possible. [159]

Q. At the time you gave that check to Mr. Jardine did you know you didn't have money in the bank to pay it?

A. I may have had it; I had money, large balances in the bank.

Q. When you gave the check did you expect it to

(Testimony of Fielding J. Stilson.)

be paid? A. Absolutely, yes.

Q. When you gave these other checks that you referred to, did you expect them to be paid?

A. I did.

Q. Did you consider at the time you gave that check that you were insolvent?

A. Absolutely, no. Did you say solvent or insolvent?

Q. Insolvent? A. No.

Q. Isn't it a fact that after the check had been returned, this Staats check, and you had the conversations about the matter with Mr. Jardine, isn't it a fact that you asked him as to,—offered him as collateral security stock of the Fielding J. Stilson Company and represented to him that the stock was good and that the company was solvent?

A. Possible, but I have no recollection of offering the stock.

Q. Isn't it a fact that after the check had come back you told Mr. Jardine that the Fielding J. Stilson Company was solvent, had a great deal of property, and it was simply some money that had not come in and would be in in the course of a few days?

A. I did.

Q. Do you recall, Mr. Stilson, the fact that on certain occasions prior to this there had been checks of yours returned to Mr. Staats which you asked him to hold up, and in each case they had always been made good? A. Always did. [160]

Q. And as a matter of fact it is true, isn't it, Mr. Stilson, that in the brokerage business, where brokerage firms are handling considerable quantities

(Testimony of Fielding J. Stilson.)

of securities, that it not infrequently happens that another broker will ask you to hold over a check?

A. I have done it for the biggest concerns.

Q. It is a matter of frequent occurrence?

A. I cannot answer.

Q. It has happened, you say, frequently, and you yourself have asked this favor and have extended it to others? A. Both ways.

Q. Now, when you testified, Mr. Stilson, the other day that the company had incurred no new obligations after the 19th of March, were you testifying of your own knowledge, considering the fact that you were out of the line of business for ten or twelve days at least after the 19th of March, weren't you basing that, at least during that period, on hearsay?

A. On hearsay, yes.

Mr. TULLER.—Your Honor, it may be that I will want to ask some further questions,—one other thing—

Q. This is the check which you executed to the William R. Staats Company?

(Counsel produces document.)

A. Yes.

Mr. TULLER.—I will offer this in evidence as defendant's exhibit.

The SPECIAL MASTER.—Defendant's Exhibit 1.

Mr. TULLER.—I would like the privilege of a little further cross-examination if I may have that at some future time?

(Testimony of Fielding J. Stilson.)

Redirect Examination.

(By Mr. CRAIG.)

Q. Mr. Stilson how many times have you requested the Staats Company to hold up your checks prior to the 19th? [161]

A. Two or three times.

Q. How many days have they held it up?

A. Not over two or three days at the outside.

Q. Did they on any former occasion know that any other checks of yours had been turned down for want of funds? A. I had none.

Q. Then they had no such knowledge before?

A. Not to my knowledge.

Q. Did they ever on any occasion prior to that time ever ask you for security for a check which had been turned down for lack of funds?

A. They did not.

Q. Is this the only occasion where they asked you to secure your bad check? A. It is.

Mr. CRAIG.—That is all.

Recross-examination.

(By Mr. TULLER.)

Q. Are you quite sure that you hold Mr. Jardine at any time before the execution of the trust deed that the Stilson Company was insolvent and that you could not meet your obligations?

A. I emphatically told him that I could not meet checks that were out in addition to his.

Q. Are you sure you told him there were other checks out? A. I am.

Q. It is a fact that whatever else you told him, you

(Testimony of Fielding J. Stilson.)

did tell him that the company itself was solvent and that you had sufficient to meet your obligations?

A. Yes.

Mr. TULLER.—That is all.

Mr. CRAIG.—I will call Mr. J. A. Craig. [162]

[Testimony of J. A. Craig, for Plaintiff.]

J. A. CRAIG, a witness produced on behalf of complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. CRAIG.)

Q. What is your name?

A. James A. Craig.

Q. Where do you reside?

A. 441 Centennial Street, Los Angeles.

Q. How long have you lived in this city?

A. Twenty-nine years. I have lived there twenty-nine years.

Q. What is your business?

A. Real estate business.

Q. How long have you been in the real estate?

A. About eight years.

Q. Centennial Street, where you have resided for 29 years is in the vicinity of the property of the Fielding J. Stilson Company? A. Yes.

Q. Are you familiar with that property?

A. Yes, sir.

Q. Have you bought and sold real property in the vicinity of the property described in the schedules in bankruptcy in this case? A. Yes, sir.

Q. Do you know the value of the, of property, of

(Testimony of J. A. Craig.)

the property described in the schedules in this case?

A. I think I do, sir.

Q. Have you examined all of the properties—

A. Yes, sir.

Q. — set forth in the schedules in the case?

A. Yes, sir. [163]

Q. Can you testify what the reasonable market value of that property was on the 19th day of March, 1912? A. Yes, sir.

Q. You testified in this matter on the—as to the values of this property at the trial of the involuntary petition in bankruptcy in this case, did you not?

A. Yes, sir.

Q. Had you examined those properties in 1912 prior to the date of the adjudication?

A. Yes, sir.

Q. You stated that you have valued every piece of property set forth in the schedules in this matter?

A. Yes, sir.

Q. What was the value of all of that real property on the 19th day of March, 1912?

Mr. TULLER.—I object to that question, your Honor, as a lump valuation of this property.

The SPECIAL MASTER.—You can go into it in cross-examination, save time, Mr. Tuller.

A. You mean the total of everything?

Q. (By the SPECIAL MASTER.) All that was scheduled there?

Q. The real estate scheduled here does not include the home property of Mrs. Stilson, and if you have the valuation of that property I want you to omit it?

(Testimony of J. A. Craig.)

A. Well, the value of the real estate in the Angeleno Heights District was \$185,850.00, outside of the Homestead property of Mrs. Stilson and Fielding J. Stilson; the San Julien property down near fifth was valued at \$36,000.00; the lot in San Gabriel valued \$100.00.

Q. Did that \$185,000 include the home place?

A. No, sir. [164]

Mr. CRAIG.—Take the witness.

Cross-examination.

(By Mr. TULLER.)

Q. You are a brother of Mr. Craig, the attorney for plaintiff in this case? A. Yes, sir.

Q. At whose request did you examine this property?

A. I was asked by Mr. Craig and a list of the property was submitted to me. I have forgotten where I got that list from but I went to work on it.

Q. Is the appraisement that you are making an appraisement of the properties given you in that list? A. Yes.

Q. Have you that list with you?

A. No, that list was turned in here, if I remember. I had some lists and maps.

Mr. TULLER.—Have you the list, Mr. Craig, on which your brother worked?

Mr. CRAIG.—Do you mean this last time?

Mr. TULLER.—No, the first time.

Mr. CRAIG.—No, the list that he worked from the first time was misplaced, and, Mr. Tuller, the last time the list was taken from the schedules a few days

(Testimony of J. A. Craig.)

ago and he was instructed to go over it.

Q. Have you made two appraisements?

A. No, this was a copy of the first.

Q. The list referred to as given you a few days ago, you haven't gone out and examined it?

A. No.

Q. So that what you are testifying to now is a memorandum made from the time you went out the first time you examined the property?

A. Yes, sir. [165]

Mr. TULLER.—I move to strike out all of the witness's examination until the list referred to shows that the property is in issue.

The SPECIAL MASTER.—Motion denied.

Redirect Examination.

(By Mr. CRAIG.)

Q. I asked you if that figure you gave was a figure including that property out there,—now, I call your attention to your figures here, that you have reversed the figures, instead of 185 it is 158 thousand?

A. I notice that is right.

Q. Then, the figure you gave a while ago of 185,000 is incorrect? A. Yes, sir.

Q. What is the correct figure?

A. \$158,850.00.

Q. That is the property outside of the home property, the San Julian and the \$100.00 lot?

A. Yes, sir. Yes, \$158,850.00, I reversed it in carrying it forward.

Mr. TULLER.—No further questions.

Mr. CRAIG.—I intend to call Mr. Carroll Stilson.

(Testimony of J. A. Craig.)

The only thing I am going to ask him about is the conversation that occurred at the final meeting as to where those papers were signed up.

Mr. TULLER.—Are you through, then?

Mr. CRAIG.—Unless you want the expert book-keeper here.

Mr. TULLER.—You already have testimony in that the debts were between two hundred fifty and two hundred and sixty thousand dollars, and I don't know how we are going to disprove it, also I don't like to concede it.

Mr. CRAIG.—I believe that that testimony of Mr. Stilson's was material testimony, but I don't want to have the question made on that subject hereafter when we are able to prove that that is the valuation.

[166]

[Testimony of Carroll J. Stilson, for Plaintiff.]

CARROLL A. STILSON, a witness produced on behalf of the complainant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. CRAIG.)

Q. What is your name? A. Carroll A. Stilson.

Q. Mr. Stilson, were you an officer of the Fielding J. Stilson Company in March, 1912? A. I was.

Q. What officer? A. Secretary.

Q. Do you remember when the Fielding J. Stilson Company executed a note and trust deed to the Staats Company? A. I do.

Q. Had you any conversation with any officer of

(Testimony of Carroll A. Stilson.)

the Staats Company prior to the time of the execution of this instrument?

A. In regard to the matter in hand?

Q. Yes, sir, in regard to the execution of the security for the notes? A. No, I don't remember.

Q. Did you have any talk with any officer of that company with relation to the check given to the Staats Company and which went back for lack of funds? A. No, I don't remember of it.

Q. Were you present when the note and trust deed were executed?

A. I was present part of the time, yes.

Q. Where were those instruments signed?

A. To the best of my recollection it was in the office of the Staats Company. I remember of seeing them there and I remember [167] my brother going over them with Mr. Coggeshall in the office of the Staats Company, the seal of the corporation was placed on the instrument.

Q. Who placed it there?

A. My brother placed it there, if my recollection is correct.

Q. Do you remember how the seal got from the office of the Fielding J. Stilson Company to the office of the Staats Company?

A. I think I remember the incident. I think it was carried over there by my brother.

Q. Were you present at any conversation that occurred at the time the instruments were signed?

A. I remember that my brother and Mr. Coggeshall had been out to look at the property in question,

(Testimony of Carroll A. Stilson.)

and they were going over the papers in the office of the Staats Company there, and I believe it was mutually agreed that they were drawn up correctly.

Q. As secretary of the corporation were you ever called upon to deliver to the Staats Company any resolutions authorizing the execution of these instruments?

Mr. TULLER.—Objected to as irrelevant and immaterial.

The SPECIAL MASTER.—Objection sustained.

Mr. CRAIG.—The question was whether he was called upon to deliver any resolutions. I submit that as a very important consideration. People who are getting security for a loan are not securing \$3,850.00 without some evidence delivered to them that there is authority for the officers to execute the instruments. It is a circumstance to show the hurry with which this thing was done.

The SPECIAL MASTER.—You may answer the question subject to the objection. The objection will be sustained.

Mr. TULLER.—The signing by the officers and the seal of the corporation is *prima facie* evidence of the execution of it.

Mr. CRAIG.—I venture to say that no lawyer would take the seal of a corporation as proof that the board of directors had authorized the execution of a note. [188]

Mr. TULLER.—The general manager does not need any authority to execute an instrument.

(Testimony of Carroll A. Stilson.)

A. No, I don't think any demand was made to my knowledge.

Q. Was any question asked you as secretary of the corporation as to the authority of yourself and your brother to execute the note, by anybody connected with the Staats Company?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Same ruling. Answer the question, subject to the objection.

A. No, I don't remember now.

Q. You were present at the time that the note and trust deed were delivered, were you?

A. Well, practically so; I saw it in the hands of Mr. Coggeshall. That was in the office of the Staats Company and my brother was present on the date in which—

Q. How did you as secretary of this corporation come to sign the promissory note and trust deed to the Staats Company?

Mr. TULLER.—Objected to as irrelevant, immaterial and incompetent.

Mr. CRAIG.—I think I am entitled to know what—

Mr. TULLER.—This suit is simply that a preference was created. That is the only question, I believe.

Mr. CRAIG.—Suppose that this witness testifies that he did this because his brother told him to.

Mr. TULLER.—That hasn't anything to do with the preference. Question read by reporter.

A. Well, we had always been very friendly with

(Testimony of Carroll A. Stilson.)

the Staats people. They had done a number of favors for us and we simply wanted to protect them.

Q. At whose request did you sign the note and trust deed?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Objection overruled.

[169]

A. At my brother's request.

Mr. CRAIG.—That is all.

Mr. TULLER.—No questions.

Mr. CRAIG.—That is all with the exception, of course, of the proof of the liabilities of this corporation.

The SPECIAL MASTER.—When we get through if there is any proof that goes to that on the party defendant, you will have to have Mr. Palethorpe here, or we will arrange it at that time.

Mr. TULLER.—This morning there was something about a seat in the stock exchange to be connected. I now move to strike that out. You may recall that some time, subsequent to the 20th of March, Mr. Fielding J. Stilson was suspended from the Stock Exchange.

The SPECIAL MASTER.—It is immaterial. Motion granted.

[Testimony of John Earl Jardine, for Defendant.]

JOHN EARL JARDINE, a witness produced on behalf of defendant being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of John Earl Jardine.)

Direct Examination.

(By Mr. TULLER.)

Q. Your name? A. John Earl Jardine.

Q. Occupation?

A. Vice-president of the William R. Staats Company.

Q. Did you so occupy and hold that position in March, 1912? A. I was, yes.

Q. I will ask you to state the transactions between the firm of William R. Staats Company and the Fielding J. Stilson Company out of which this transaction arises, what you know about it?

A. This particular transaction you refer to?

Q. Yes, sir.

A. On March 15th, 1912, the Fielding J. Stilson Company represented in this case by Mr. Fielding J. Stilson, president, purchased [170] from us through our Mr. Brooks, who handled our stock commission business, 200 shares of Amalgamated Oil stock at \$64.50 a share, making a total of \$12,900.00, which was made in the ordinary course of events, and he gave us a check the same day, as I remember it, drawn on the Citizens' National Bank, in that sum.

Q. I show you Defendant's Exhibit 1 in this case and ask you if that is the check?

(Witness examines document.)

A. That is the check, yes.

Mr. TULLER.—By the way, let me interrupt just a minute. At the time the answer was filed I didn't fill in the number of shares and the price, I was in

(Testimony of John Earl Jardine.)

such a hurry to get the answer in. I would like to fill that in in the answer on file if there is no objection.

The SPECIAL MASTER.—The answer is not here. I will get them before you are through.

Mr. CRAIG.—It is inserted in mine.

Mr. TULLER.—It is possible I inserted it later. If not inserted in the original, it may be?

Mr. CRAIG.—Yes, sir.

Q. Proceed.

A. The check was deposited in the usual way through the National Bank of California, one of our depositaries, and on the following day, March 16th, we were called up and advised by the bank that the check had come back to them through the clearing marked insufficient funds. The matter was called to my attention by our cashier and I took the matter up with Mr. Stilson, my recollection is over the telephone. He said, "Just put the check through again and it will be made good." The 16th was Saturday. We advised the bank of the information we had received from Mr. Stilson; therefore, they held the check and it was not charged against our account that day. Monday, the 18th, [171] we instructed the bank to present the check for payment again, and again it came back. Again I took the matter up with Mr. Stilson. He reiterated the fact that the check would be made good so that it was presented for payment the second time.

Q. On what date was that?

A. Monday. My recollection is that it was pre-

(Testimony of John Earl Jardine.)

sented for payment on two different occasions Monday. When it came back the second time I was quite annoyed by it, and I asked Mr. Stilson to come in and talk the matter over with me, and he came in. I said to him, "Now, on several other occasions heretofore we have, as a matter of accommodation to you, carried your checks for two or three days, and we are perfectly willing to do anything of that kind as a matter of accommodation, but I don't like the unbusinesslike way in which you are handling your affairs, and if it is,—and I want to know when this will be paid." He told me that he expected to receive some funds from a real estate transaction, my recollection is \$10,000.00, that he had been disappointed in having the payment made as promptly as he expected, and therefore he might be still further delayed in making this check good. "Well," I said, "What do you want us to do, carry the matter over for you a little longer, we are perfectly willing to do it, perfectly willing to make you a loan to carry the matter over, but when we make loans we are accustomed to being secured in some way. It is against the resolutions adopted by our board of directors to make unsecured loans." My recollection is that that conversation took place on the 18th. On the 19th, the morning of the 19th, I had another conversation with him and he then said that he would agree to our proposition of making a temporary loan to take care of this matter. It was on the 19th that the check in question was charged against, charged back against our account at the bank. In making the

(Testimony of John Earl Jardine.)

original delivery of the 200 shares of stock to the Stilson Company the delivery was made in the [172] shape of a certificate for 60 shares of actual stock and what is known in brokers' parlance as a due bill for 140 shares. Thereafter, on the 19th, when we made the agreement as to this temporary adjustment of this matter, it was agreed that as the stock, the actual stock had not been delivered to Mr. Stilson on this due bill, that that—that the note, or that the loan that we would make them should be on the basis of the sale price of the 60 shares of stock at \$64.50, amounting to \$3,870.00. As we both considered it only a temporary matter, it was agreed that the loan should be a one day loan. When the matter of collateral came up, Mr. Stilson said, well now, I can give you some stock of the Fielding J. Stilson Company which is good collateral, and I said, "Fielding, we are not in the habit of loaning on stock of a close corporation such as yours. The only two types of collateral that we loan on are listed securities, listed on stock exchanges or bonds, municipal or corporation, or real property." "Well," he says, "I have got plenty, that is, the Fielding J. Stilson Company, has plenty of real property, and we will give you a deed of trust on some of our real property." That was agreeable to me and I asked Mr. Stilson during those conversations the point-blank question as to the kind of shape his company was in. "Why," he says, "we are in good shape, everything is all right; we have got a large amount of property out there which is worth at least a quarter of a mil-

(Testimony of John Earl Jardine.)

lion dollars and our liabilities at the outside are," my recollection is, "not over a hundred and fifty thousand dollars." He impressed it on my mind in the very strongest manner as to the substantiability of his corporation.

Mr. CRAIG.—I have allowed Mr. Jardine to go on and on—

The SPECIAL MASTER.—From the word "impressed" will be stricken out.

Q. State what he said? [173]

A. He told me that his corporation was in sound shape and had assets largely in real property very much in excess of its total liabilities. After arriving at this tentative understanding as to the method of our making him this loan and the way it was to be secured, I told him that our Mr. Coggeshall, the assistant treasurer of our corporation, would go out with him and look over some of his properties, and they would agree together as to what properties should be placed in this deed of trust to secure his loan. At that point I referred the matter of the appraisal of this property to Mr. Coggeshall and he went out with Mr. Stilson and looked at that right after lunch. They got back and Mr. Coggeshall showed me a list of some properties which he said he considered sufficient for our purposes, and I said that if that was his judgment it was satisfactory to me, we would make the loan on that basis and asked him to close up the details of the transaction. That is all that I had to do with it. Mr. Coggeshall handled the matter during that afternoon and the pap-

(Testimony of John Earl Jardine.)

ers were drawn and executed; the deed of trust was recorded.

Q. Do you know the market value of Amalgamated Oil stock on the 15th of March, 1912?

A. The market value was practically the price at which the stock changed hands on that day. Of course, sometimes the stock will sell for a certain price in the morning and for a higher price in the afternoon, or *vica versa*, but that was substantially the market.

Q. Did it increase or decrease after that time?

A. Increase.

Q. I will ask you if at any time prior to the execution of this deed of trust you were told by Mr. Stilson or anyone that the Fielding J. Stilson Company had any other checks other than yours which had been dishonored?

A. I have no such recollection. [174]

Q. Did you know of any other checks, other than yours, being dishonored? **A.** No.

Q. I will ask you if you ever had any conversations or made any inquiries of anyone prior to this time as to the financial condition of the Fielding J. Stilson Company, and if so, state of whom you inquired and when?

Mr. CRAIG.—I think that is immaterial and incompetent.

The SPECIAL MASTER.—Objection sustained.

Mr. TULLER.—There is an allegation here that this corporation was insolvent—on the question of our good faith I wish to show that they had made inquiries.

(Testimony of John Earl Jardine.)

The SPECIAL MASTER.—You may put in the proof subject to the objection. The reason I sustained the objection is this, if you had reasonable cause to believe, then you had something which would put you on inquiry; if you had any cause to believe, and any reason to be put on inquiry, you are chargeable with everything that your inquiry would disclose.

Mr. TULLER.—Does your Honor rule that the words "reasonable cause to believe" are—

Mr. CRAIG.—I want to add to that objection that any testimony that may be given along the line that is now started by Mr. Tuller to bring out would be hearsay.

The SPECIAL MASTER.—Save an exception.
Question read by reporter.

A. I made two such inquiries. My recollection is that those inquiries were made within about six months before this happened. They were made on the occasion that Mr. Stilson first asked us to hold over a check of the Fielding J. Stilson Company, or it was a check which came back and had to be presented again, one or the other of those circumstances. I took the matter up with Mr. Stoddard Jess, vice-president of the First National Bank and Mr. R. R. Rogers, vice-president of the National Bank of California, and [175] asked those gentlemen what they knew about the Fielding J. Stilson Company's financial responsibility and business methods. The answer was almost identical in each case that they considered the Fielding J. Stilson Company and Mr.

(Testimony of John Earl Jardine.)

Stilson himself perfectly good and responsible financially but they thought he was somewhat careless in his business methods. I remember Mr. Rogers, for instance, stating that they would be quite likely to have checks more than sufficient to take care of his bank balance lying on his desk and fail to send them in for deposit owing to his not having good organization. On two or three different occasions we extended to the Fielding J. Stilson Company the favor of holding over checks two or three days.

Q. I will ask you if there had been instances both where you had been asked to hold them over and checks that had been dishonored, I mean checks of the Stilson Company?

A. I cannot state positively that both circumstances prevailed, but I rather think they did.

Q. Prior to this did they ever fail to pay it in full?

A. No, they did not.

Q. I will ask you what was the reputation of the Fielding J. Stilson Company in the Stock Exchange as to its financial responsibility?

Mr. CRAIG.—Incompetent and immaterial, and calling for an opinion of somebody else, and no proper foundation laid for it.

Mr. TULLER.—I submit that it is very important, the reputation—

The SPECIAL MASTER.—You may save the point.

Question read by reporter.

Q. I will amend that, "on the Stock Exchange and in financial circles?"

(Testimony of John Earl Jardine.)

A. The financial standing was good.

Q. Now, at the time you took this deed of trust, or at any time prior thereto, did you know that the Fielding J. Stilson Company was insolvent?
[176]

Mr. CRAIG.—I object to it as immaterial and incompetent; not the proper way to prove the question.

Mr. TULLER.—He alleged that they knew of it; I don't know of any better way of proving it.

The SPECIAL MASTER.—You may answer the question.

Q. Did you find it to be solvent?

Mr. CRAIG.—Same objection.

The SPECIAL MASTER.—Objection sustained. I am going to sustain both objections. Answer the question.

Question read by reporter.

A. I *certain* did not.

Mr. TULLER.—I believe that is all.

Cross-examination.

(By Mr. CRAIG.)

Q. Mr. Jardine, you received a check from Mr. Stilson for \$12,000.00, which was in payment of 200 shares of Amalgamated Oil Company, at \$64.50, did you not?

Mr. TULLER.—The exact amount is \$12,900.00.

Q. Which was received by your company; that was for stock which was sold to him as a broker, was it not?

Mr. TULLER.—I don't know just what the question means, if you will explain it I may not object to it. If he means with relation to other persons,

(Testimony of John Earl Jardine.)

of course I will object to it.

The SPECIAL MASTER.—Objection sustained.

Q. You knew that Mr. Stilson was a stock broker, did you not?

A. I knew that he was a stock broker. We had no knowledge,—as to what, in what particular connection he bought this stock. Brokers buy stock for other companies.

Q. You don't know, then, whether he was buying this stock for his own account or buying it as a broker? A. No way of knowing it. [177]

Q. What was this so-called due bill for 140 shares?

Mr. TULLER.—There again, if it means the terms of it, I object to it.

The SPECIAL MASTER.—He has testified that there was a due bill given; objection overruled.

Mr. TULLER.—The question, as I understand, asks for a recital of the due bill.

Mr. CRAIG.—I want the record to show what the due bill is.

Mr. TULLER.—I object to the witness testifying as to any other thing than the terms of the due bill.

Q. (By the SPECIAL MASTER.) State the terms, the language?

A. My recollection of the language of the due bill is as follows: "Due Fielding J. Stilson Company 140 shares of Amalgamated Oil," simply a memorandum given him with the shares of stock actually given to show that in lieu of the other 140 shares—

Q. Did you know that this 140 shares of stock had been used as collateral by Mr. Stilson before the check went bad?

(Testimony of John Earl Jardine.)

Mr. TULLER.—Objected to as irrelevant and immaterial. I think I will withdraw that.

The SPECIAL MASTER.—The 140 shares due bill had been given to Lateau. He testified this morning that prior to the giving of the trust deed he had given it to Lateau.

A. I heard of it at some time, but my recollection is I didn't know of it prior to the trust deed. I would not say that positively.

Q. Mr. Jardine, do you mean to say that when this \$12,000.00 check went bad you didn't know that Mr. Stilson had used the entire 200 shares of Amalgamated Oil?

Mr. TULLER.—I object to that.

A. I did not.

Q. When you took this \$3,870.00 trust deed what discussion was there between you as to the balance of the twelve thousand dollars? [178]

A. Merely this arrangement, that as between us the 140 shares had not been delivered to him, therefore, as between us, that matter was as it were in abeyance.

Q. What do you mean by abeyance, what was said between you and him?

A. I cannot recollect the exact language but it was equivalent to the transaction being canceled.

Q. Did you get any writing from him cancelling the 140 due bill?

A. As between brokers it is not—

Q. Answer the question. A. No.

Q. Was there any written evidence whatever with relation to delivering the 140 shares of stock?

(Testimony of John Earl Jardine.)

A. Verbal agreement.

Q. Was there a verbal agreement at that time?

Mr. TULLER.—Objected to as incompetent, irrelevant and immaterial in this case.

The SPECIAL MASTER.—Objection overruled.

A. That is my recollection.

Q. What do you mean by, that is your recollection?

A. That is my recollection, there was such an agreement.

Q. You mean there might or might not have been?

A. My recollection is there was.

Q. You are not positive about it?

A. That is my best recollection.

Q. When did you first learn this 140 shares had been used by Mr. Stilson?

Mr. TULLER.—Objected to as irrelevant and immaterial and not bearing on this case.

The SPECIAL MASTER.—If it was subsequent to the 19th of March—

Mr. CRAIG.—That is what I want to know, if it was prior or subsequent. [179]

The SPECIAL MASTER.—You can answer the question.

A. What was the question?

Q. (By SPECIAL MASTER.) When was it, prior or subsequent to the 19th of March, that you heard that the due bill had been hypothecated?

A. I had no knowledge what he did with the stock.

Q. (By the SPECIAL MASTER.) That isn't the question. The question is, when did you hear,

(Testimony of John Earl Jardine.)

either subsequent—when did you first hear, either subsequent or prior to the 19th of March that the due bill had been hypothecated?

A. I cannot tell you that, I cannot tell you when I did know.

Q. Where was this 200 shares purchased from you, on the stock exchange?

Mr. TULLER.—Objected to as immaterial; do you mean the transaction whereby Stilson purchased?

Mr. CRAIG.—Yes.

Mr. TULLER.—No objection.

A. The transaction was handled by our Mr. Brooks. The details as to where the transaction was consummated I was not entirely cognizant with.

Q. Who is your Mr. Brooks?

A. He represents us on the Los Angeles Stock Exchange and handles our stock commission business. He occupies the position of clerk for me as member of the Los Angeles Stock Exchange.

Q. You were not on the Exchange that morning that the purchase was made? A. No, sir.

Q. Mr. Brooks was acting for you that day?

A. Yes, sir.

Q. Is your company in the habit, Mr. Jardine, of loaning money on real estate on second mortgage?

Mr. TULLER.—Objected to as incompetent, irrelevant and immaterial. [180]

The SPECIAL MASTER.—Why isn't that proper cross-examination?

Mr. TULLER.—And not proper cross-examination.

(Testimony of John Earl Jardine.)

The SPECIAL MASTER.—They didn't ask that.
Mr. CRAIG.—Yes, they did.

The SPECIAL MASTER.—Isn't it proper cross-examination? Objection overruled.

A. We have done so.

Q. How frequently?

Mr. TULLER.—Same objection to all this line.

A. Shall I—well, I could not say how frequently, I have one case in mind where we made a loan of \$4,000.00, and as a matter of accommodation to him, pure and simple, we took a second mortgage on some property of his, but we considered the equity perfectly good.

Q. Was that in 1912 or before that time?

A. That same year, I think it was.

Q. Was your corporation in the habit of loaning its money on second mortgage real estate security without a certificate or an abstract of title?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—That objection will be sustained; no testimony in reference to that.

Q. I will ask you whether or not the William R. Staats Company, at the time of loaning this money requested a certificate or abstract of title, or obtained one?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Objection overruled.

A. As to whether a certificate of title was requested, I cannot state as the details were turned over by me to Mr. Coggeshall. I will say, however, that as we regarded the matter as purely a tem-

(Testimony of John Earl Jardine.)

porary one, if the matter had been referred to me I would not have insisted upon it. The note was a one-day note. [181]

Q. Then, as I understand you, you didn't receive any abstract or certificate of title?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Same ruling.

A. My recollection is we didn't.

Q. Is your company in the habit of loaning money on a second mortgage without a certificate or abstract of title?

Mr. TULLER.—Same objection.

The SPECIAL MASTER.—Objection overruled.

A. I answered that we had loaned money without that.

Q. Answer my question, yes or no.

Q. (By the SPECIAL MASTER.) Are you in the habit of making such loans without a certificate of title? A. I cannot answer yes or no.

Q. Did you ever make a loan on a second mortgage without an abstract of title?

A. I cannot answer that.

Q. Why?

A. Because the history of the company goes back 30 years.

Q. Well, then, in 1912, or the year prior to that time?

Q. (By the SPECIAL MASTER.) Did your company ever make a loan secured by a second mortgage on property without a certificate of title during 1912 or '11?

(Testimony of John Earl Jardine.)

A. The loan that I mentioned before was one made in 1912 on second mortgage; I am not positive whether we got a certificate of title with it or not.

Q. Outside of that one you can say that your company did not make any loans without a certificate of title? A. I cannot say.

Q. (By the SPECIAL MASTER.) Of your own knowledge?

A. I cannot state that positively, impossible for me to state. [182]

Q. Do you know of your own knowledge?

Mr. TULLER.—This is all subject to the same objection.

Q. (By the SPECIAL MASTER.) Do you know of your own knowledge, did they ever make such a loan without a certificate of title?

A. Not to my knowledge.

Q. Why, Mr. Jardine, was it that if you regarded the Fielding J. Stilson Company as solvent and as being able to meet its obligations, as you have testified, that you insisted upon that \$3,870.00 being secured by a note payable one day after date, explain that?

A. Because we did not make unsecured loans, and it is against the resolutions of the board of directors that we make unsecured loans.

Q. Didn't you make loans unsecured?

A. What do you mean?

Q. How many days did you carry checks?

A. Unsecured?

Q. Yes? A. We didn't make unsecured loans.

(Testimony of John Earl Jardine.)

Q. I refer to checks that are turned down or returned for insufficient funds?

A. I don't quite understand.

Q. How long did you hold those?

Mr. TULLER.—Objected to as irrelevant and immaterial and not cross-examination.

The SPECIAL MASTER.—Objection sustained.

Q. Isn't it a fact that you held the Fielding J. Stilson Company's checks for a longer period than three days on former occasions without asking for security? A. No.

Q. How long had you held them?

A. My recollection is not over, in any case, three days, if anything, two days. [183]

Q. Mr. Jardine, do you mean to testify that you didn't know that the Fielding J. Stilson Company was in financial difficulties at the time that this check was returned to you?

A. When the check was returned to us?

Q. Yes? A. No, I did not.

Q. Do you mean to testify that you didn't read in the public print of this city, prior to the 19th day of March, 1912, the fact that the Fielding J. Stilson Company was in financial difficulty?

A. I did not.

Q. Will you swear that it was not known throughout the Stock Exchange that the Fielding J. Stilson Company was about to be suspended?

A. I didn't know of that.

Q. Will you testify that up to the time of the return of the check that you didn't know that they

(Testimony of John Earl Jardine.)

were in financial difficulty?

A. I had no knowledge of their being in financial difficulties.

Q. Why, he—now, after the return of that check and before the 19th of March, do you mean to swear that you had no knowledge outside of the fact that your check had been returned, that the Fielding J. Stilson Company was in financial difficulties?

Mr. TULLER.—I object to that.

The SPECIAL MASTER.—Objection overruled.

Q. Up to the time of their—

Q. (By the SPECIAL MASTER.) Up to the time of the making of the trust deed?

A. Mr. Stilson told me in our conversation that he had other matters which he had satisfactorily taken care of in other ways.

Q. Is that your answer to my question?

A. Yes.

Mr. CRAIG.—Will you please read that question? I want you to answer. [184]

Question by reporter as follows: "Now, after the return of that check and before the 19th of March, do you mean to swear that you had no knowledge outside of the fact that your check had been returned, that the Fielding J. Stilson Company was in financial difficulties?"

A. I don't know of any other way that I can answer it.

Q. (By the SPECIAL MASTER.) Had you any knowledge of it by the public press, rumors on the Stock Exchange prior to the giving of the trust

(Testimony of John Earl Jardine.)

deed, except your own dealings?

A. Except my own dealings, and in the course of the conversations with Mr. Stilson he told me that he had some other matters due some other people and that he had adjusted those matters by,—had taken care of them by giving these people notes.

Q. Well, then, he did tell you that he had other checks that had been turned down? A. No.

Mr. TULLER.—That is not what he testified to at all. He simply told you he had other matters.

Q. Outside of the dealings with Fielding is that the only knowledge you had that the Fielding J. Stilson Company was in financial difficulty?

A. That is my recollection.

Q. You won't swear that that is so? Do you read the newspapers? A. I try to.

Q. You remember, don't you, that the public prints of Los Angeles were all of them full of the difficulties of the Fielding J. Stilson Company?

Mr. TULLER.—I object to counsel stating what was in the papers; no foundation laid.

The SPECIAL MASTER.—The question is whether the witness knows of any such publication.
[185]

A. I am not trying to elude the question. The first time I knew of this was on the 20th of March.

Q. The day after the transaction?

A. Yes, sir.

Q. Did you direct the recording of that trust deed?

A. I can't say that I directed it; it was done as an ordinary matter of business; if I had been asked by

(Testimony of John Earl Jardine.)

Mr. Coggeshall, "Shall I record it," I would say, "Yes, record it."

Q. It was recorded, according to the record, on the 20th day of March, at 9:00 o'clock A. M. You don't know who took care of the recording of it?

A. No, I don't, just a matter of routine in the office.

Q. Do you know how late on the 19th it was given?

A. I do not. That all was in the hands of Mr. Coggeshall.

Q. Weren't you present when it was executed?

A. No, I think not. I have no recollection of seeing it executed.

Q. Had Mr. Brooks, prior to the 19th of March, 1912, informed you of any rumors upon the Stock Exchange with relation to the affairs of the Fielding J. Stilson Company? A. I cannot remember that.

Mr. CRAIG.—That is all.

Mr. TULLER.—I believe no redirect.

[Testimony of J. A. Coggeshall, for Defendant.]

J. A. COGGESHALL, a witness produced on behalf of the defendant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. TULLER.)

Q. Mr. Coggeshall, why did you not get a certificate of title or abstract showing the title to this property of the [188] Fielding J. Stilson Company on which you took the trust deed?

Mr. CRAIG.—I object to it as calling for the con-

(Testimony of J. A. Coggeshall.)

clusion of the witness; what his reasons or opinion may be are absolutely immaterial and incompetent.

Mr. TULLER.—Counsel has gone into this at some length in the former witness; I now intend to show why it was not done.

The SPECIAL MASTER.—Answer the question. Objection overruled.

A. The papers were drawn at the Title Insurance & Trust Company, and after the note was signed and the trust deed executed the gentleman that handled the escrow asked if we wished a certificate; I told him no, that the loan was only for a few days—

Mr. CRAIG.—I object to the conversation.

The SPECIAL MASTER.—The objection,—the conversation, I think, ought to be stricken out.

Q. Who was present at that time?

A. Mr. Fielding J. Stilson—do you mean at the time—

Q. The time that particular conversation you were about to detail?

A. I know positively that Fielding J. Stilson, the gentleman who handled the escrow, and myself were.

Mr. TULLER.—Under that circumstances, I think the question is material.

The SPECIAL MASTER.—Ask the question.

Q. State what was said in the conversation you were about to detail.

A. After the papers were fully executed the gentleman handling the escrow asked if we wanted a certificate of title. I said, no, it is only a matter of accommodation, will be paid in a few days.

(Testimony of J. A. Coggeshall.)

Q. I will ask you why you didn't require a certificate of title?

Mr. CRAIG.—Objected to as incompetent, irrelevant and immaterial, calling for a conclusion of the witness. [187]

The SPECIAL MASTER.—I think he has already answered. Objection sustained.

Mr. TULLER.—That is all. I would like to take an adjournment. I will have more witnesses here at that time.

The SPECIAL MASTER.—You can go on at 10:00 o'clock to-morrow. [188]

Los Angeles, California, Apr. 28, 1915.

10:00 o'clock A. M.

[Testimony of W. W. Eakins, for Defendant.]

W. W. EAKINS, a witness produced on behalf of the defendant, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. TULLER.)

Q. Please state your name and occupation.

A. W. W. Eakins, appraiser.

Q. Have you had an official relation with the bankruptcy court, or have you acted in any capacity for the bankruptcy court during the last few years?

A. As appraiser.

Q. How long?

A. For a matter of eight of ten years.

Q. In that connection, have you had occasion to pass upon the values of property in the bankruptcy

(Testimony of W. W. Eakins.)

court? A. A great many.

Q. I will ask you if you ever made an appraisal, in or about the month of January, 1913, you made an appraisal of the real estate belonging to the estate of the Fielding J. Stilson Company and listed in the schedules filed by the Fielding J. Stilson Company. A. Yes.

Q. I will ask you to state the value of that real property as you ascertained.

Mr. CRAIG.—I object to it on the ground that no proper foundation has been laid.

Mr. TULLER.—Object to the qualification of the witness to express an opinion?

Mr. CRAIG.—Yse, sir; on this real property. I know Mr. Eakins to [189] be an appraiser, one of the best qualified in Los Angeles as to values generally, but as to this particular real property I don't know his qualifications.

Mr. TULLER.—He testified that he made an appraisal of this property.

Q. Your appraisal was taken for the purpose of values? A. Yes.

Mr. TULLER.—I submit the question.

The SPECIAL MASTER.—Objection overruled.

A. You want to know the value of the whole thing?

Q. Yes. A. The grand total, \$272,125.00.

Q. That memorandum made by you at or about the time?

(Witness examines document)

A. Yes.

Mr. TULLER.—You may cross-examine.

(Testimony of W. W. Eakins.)

Q. One other question, was the value at the time any greater than the value of the same properties in the month of March, 1912?

A. No, about the same.

Mr. TULLER.—You may cross-examine.

Q. One other question, if you will pardon me, did any other persons make an appraisalment with you?

A. Oh, yes.

Q. Who were they?

A. G. C. Gray and Mr. Colson.

Q. Do you know Mr. Colson's occupation?

A. Appraiser, both appraisers.

Q. Do you know whether he has any relation with the Security [190] Trust & Savings Bank, the complainant in this case?

Mr. CRAIG.—Objected to as immaterial and incompetent.

The SPECIAL MASTER.—That is immaterial.

Q. I will ask you to state whether or not,—and what is Mr. Gray's business or occupation?

A. Also appraiser.

Q. I will ask you whether those gentlemen also agreed with you on the appraisalment?

Mr. CRAIG.—Incompetent and immaterial.

The SPECIAL MASTER.—Objection sustained.

Mr. TULLER.—Subject to the objection I would like that answered.

A. They agreed with me.

Cross-examination.

(By Mr. CRAIG.)

Q. Mr. Eakins, in your appraisalment of the prop-

(Testimony of W. W. Eakins.)

erties, and included in the \$272,125.00, isn't it a fact that these lots, being lots 34 to '39, inclusive, in Block 15, Angeleno Heights, upon which was located the house of the mother of Fielding J. Stilson, and also Fielding J. Stilson's own residence appraised at \$31,500.00, the appraisement includes the two houses? A. Yes.

Q. Then, that property is included in the amount of your appraisement? A. Yes.

Q. Of course, you didn't make any investigations, or anything, as to whether that property belonged to the estate or not?

A. No, we never enter into that as a rule. We appraise it and then it is for the trustee to determine whether it belongs or not. [191]

Q. (By the SPECIAL MASTER.) Mr. Eakins, will you look at this list which is filed here on the 14th day of January, 1913, at the same time that the appraisement was filed, and state if that is the list and appraisement of the different valuations of the respective lots that make up this inventory of \$272,125? A. Yes, it is.

Q. (By the SPECIAL MASTER.) Now, what value did you put upon the lots that are included in this trust deed, lot 17, of block 7?

A. \$1,650.00.

Q. (By the SPECIAL MASTER.) Lot 2, block 11? A. \$1,000.00.

Q. (By the SPECIAL MASTER.) Lot 3, block 11? A. \$1,000.00.

Q. (By the SPECIAL MASTER.) 6 in 11?

(Testimony of W. W. Eakins.)

A. \$1,000.00.

Q. (By the SPECIAL MASTER.) 7 in 11?

A. \$1,250.00.

Q. (By the SPECIAL MASTER.) In block 15, lot 66? A. \$1,750.00.

Q. (By the SPECIAL MASTER.) 67?

A. \$1,250.00.

Q. (By the SPECIAL MASTER.) 68?

A. \$2,000.00.

Q. (By the SPECIAL MASTER.) 69?

A. \$1,250.00.

The SPECIAL MASTER.—No, that isn't right; no, 15½ is right, that is all in block 15½.

By the SPECIAL MASTER.—Lot 43, block 16?

A. \$2,000.00.

Q. (By the SPECIAL MASTER.) Lot 5, block 20? A. \$2,250.00.

Q. (By the SPECIAL MASTER.) Lot 3, of 29?

A. \$2,500.00.

Q. (By the SPECIAL MASTER.) 27 of 29?

A. 2,200.00. [192]

By the SPECIAL MASTER.—Lots 1 and 16 in 25?

A. \$3,250.00 for number 1, and \$1,750.00 for 16.

The SPECIAL MASTER.—That is all.

Q. (By Mr. CRAIG.) I desire to ask, Mr. Eakins, whether you know that the trustee elected in 1912 has only been able to sell about \$35,000.00 worth of this property up to the present time?

Mr. TULLER.—Objected to as immaterial and not proper cross-examination.

The SPECIAL MASTER.—You may answer the question, yes or no. A. I don't know.

Mr. TULLER.—Now, won't you stipulate that Mr. Colson and Mr. Gray, the other appraisers appointed by the Court will testify the same as Mr. Eakins? I tried to get Mr. Colson here.

Mr. CRAIG.—I will ask you a few things first, if it is possible to eliminate the bringing of this expert accountant here from San Bernardino to examine the books, if a stipulation that if he were present that he would testify that the liabilities of the concern are as stated in the schedules in bankruptcy, if you will stipulate that if he was present he would testify to that as of the date of the filing of the schedules, I will stipulate those other acts and then with the exception of about five minutes of testimony of Mr. Carroll Stilson—

Mr. TULLER.—I think I will make the stipulation that Mr. Palethorpe if present would testify as stated in his report that is, that the liabilities were taken from the books and from statements taken from Carroll Allen and from Fielding J. Stilson. It isn't fair for you to ask me,—in other words, I am willing for that report to go in and stipulate that he would testify to that report.

The SPECIAL MASTER.—The stipulation is that if the witnesses were here they would testify to those facts on both sides? [193].

Mr. TULLER.—Yes. I won't admit that in evidence as a part of it. The whole report must go in.

The SPECIAL MASTER.—What do you mean by that?

Mr. TULLER.—The report shows a number of things.

The SPECIAL MASTER.—He asks you to admit that if Mr. Palethorpe were here he would testify as to what that report shows as to the liabilities.

Mr. TULLER.—I am not willing to stipulate a part of the report. I want the whole report to go in.

The SPECIAL MASTER.—You want him to stipulate that if Mr. Palethorpe was here he would testify to the rest of the report?

Mr. CRAIG.—Well, of course, I don't know, Mr. Tuller, where these valuations came from that are in this report. Some of these valuations here are impossible values and I don't know where that expert accountant got those values, and I am not willing to stipulate.

The SPECIAL MASTER.—You are not stipulating that they are true. You stipulate that if they were here they would testify to the same thing.

Mr. TULLER.—That is it, exactly.

Mr. CRAIG.—Testify to what, testify as to the values?

The SPECIAL MASTER.—Testify that he got that information and made that report just as he states here.

Mr. CRAIG.—This report contains, with relation to the assets of this concern, not statements of facts, but statements of opinions. The liabilities are statements of facts.

Mr. TULLER.—I can't agree with you on that, because many of those we don't know whether are facts or not.

Mr. CRAIG.—The values of the assets here are mere opinions of somebody not disclosed by the record.

Mr. TULLER.—It shows.

The SPECIAL MASTER.—Mr. Craig—I don't understand that Mr. [194] Palethorpe would give any opinion as to the values himself. He would simply testify that that was the statements made to him from which he made his report. He isn't called as an expert witness on their behalf or cross-examination to arrive at values of the property, but simply the facts that went to make up his report. If you ask him what made up his report of the liabilities, Mr. Tuller on cross-examination will go into the whole subject and in cross-examination will ask him what items went to make up his report as assets, and it would be competent in evidence.

Mr. CRAIG.—I have no doubt but what the items making up the assets are admissible, but so far as the valuation placed upon those—

The SPECIAL MASTER.—I don't understand that if the witness was here he would testify as to the real facts any more than the report itself shows.

Mr. TULLER.—I don't ask you to make that stipulation,

Mr. CRAIG.—I offer in evidence all of the books, papers and memoranda in the office of the Fielding J. Stilson Company now in the hands of the trustee, for the purpose of proving the facts, that the liabilities of the Fielding J. Stilson Company were as stated in the schedules in bankruptcy filed in this matter.

Mr. TULLER.—The offer is too broad and general, showing what all of the books and papers are, by whom made or when, or what the books and papers and memoranda contain.

The SPECIAL MASTER.—Objection sustained.

Mr. CRAIG.—I will not stipulate that this report of the expert accountant made by him go in because those things are not true, and I don't intend to admit them.

The SPECIAL MASTER.—What about those two witnesses? [195]

Mr. CRAIG.—I will admit that if they were present they would testify exactly as Mr. Eakins has already testified, subject to the same objections. Is that satisfactory?

A. Mr. TULLER.—Yes, perfectly.

Mr. CRAIG.—I want to call Mr. Carroll Stilson.

Mr. TULLER.—I am not sure that I brought out from Mr. Eakins that this appraisement was made pursuant to appointment by the bankruptcy court in the matter of the bankruptcy of the Fielding J. Stilson Company, that will be stipulated?

Mr. CRAIG.—Yes, sir.

The SPECIAL MASTER.—Are you through?

Mr. TULLER.—Yes, sir.

Mr. CRAIG.—Mr. Stilson, will you take the stand?

[Testimony of Carroll A. Stilson, for Plaintiff
(Recalled).]

CARROLL A. STILLSON, recalled.

Direct Examination (Continued).

(By Mr. CRAIG.)

Q. Your name is Carroll Stilson?

A. Yes, sir.

Q. You have already been sworn in this matter?

A. Yes, sir.

Q. And you testified that you were the secretary of the corporation during the year 1912?

A. Yes.

Q. Your brother testified that he was sick from the 20th day of March, 1912, for some time, do you remember how long? I mean sick so as to be away from business.

A. He was laid up with brain fever for about a week.

Q. Who had charge of the business during his absence? A. I did. [196]

Q. You are familiar with all of the transactions of the company during his absence?

A. Practically no business, everything suspended.

Q. You are familiar with everything that did occur? A. Yes.

Q. Subsequent to the 19th day of March, 1912, was any indebtedness incurred by the company?

Mr. TULLER.—That is callnig for a conclusion of the witness.

Q. Well, was any business transaction entered into by the corporation?

Mr. TULLER.—That is too vague and general.

(Testimony of Carroll A. Stilson.)

The SPECIAL MASTER.—Objection overruled.

A. No, I don't know of any.

Q. Did you buy anything during that time?

A. No, not anything that I know of at all. I am sure not in the way of securities or anything that was pertaining to the business at all.

Q. Was any debt incurred by the corporation after that time?

Mr. TULLER.—Objected to as calling for a conclusion of the witness.

The SPECIAL MASTER.—Objection overruled.

A. No, there was nothing to my knowledge.

Mr. CRAIG.—Take the witness.

Cross-examination.

(By Mr. TULLER.)

Q. Was there anybody else—first, how long was it before your brother Fielding J. came back and took any active part in the business?

A. It was about a week before he came back to the office.

Q. But wasn't it about a week that he was laid up? Did he come back to business in about a week? [197]

A. I should say it was not greater than ten days.

Q. During that period of ten days who else was in the office of the Fielding J. Stilson Company besides yourself? A. Only the office help.

Q. Who were they?

A. The bookkeeper, the stenographer and salesman, one salesman.

Q. Who was that salesman?

A. His name was Ellis.

(Testimony of Carroll A. Stilson.)

Q. Are you able or are you not able, Mr. Stilson, to testify positively as to what Mr. Ellis did or did not do during that period?

A. Well, you mean in so far as business transactions went?

Q. So far as any transaction in or on behalf of or as salesman for the Fielding J. Stilson Company?

A. Well, I certainly would have known had he put through,—I should have known of any transaction that he put through.

Q. The last is your answer, isn't it, that you should have known?

A. Well, I qualify that by saying that I don't believe there was any. Had there been any I would have known it.

Q. Wouldn't it have been possible for Mr. Ellis to do things that you didn't know about?

A. It certainly would not have been possible for him to receive any money to be deposited in the bank without my knowledge.

Q. Wouldn't it have been possible for him to have sold something without your knowledge?

A. It might have been possible for him to sell personal property without my knowledge, that is things that did not need the seal of the corporation or endorsement of checks, without my knowledge.
[198]

Q. That would include such things as ordinary personal property, bonds and negotiable things that would not require endorsement?

A. He did not have access to the safe so I don't

know how he could have done that.

Mr. Craig.—That is the case.

(Check attached, as follows:)

[Exhibit "A"—Check.]

No. 8235.

Fielding J. Stilson Co.

Members Los Angeles Stock Exchange.

115 West Fourth St.

Tel. Main 105 and Home 10261.

Los Angeles, Cal., March 15, 1912.

Pay to the order of Wm. R. Staats & Company
\$12,900.00. Twelve thousand nine hundred and
no/100 Dollars.

NOT OVER FOURTEEN THOUSAND \$14,000\$

FIELDING J. STILSON CO.

FIELDING J. STILSON,

President-Secretary.

To the CITIZENS' NATIONAL BANK, LOS
ANGELES, CAL.

Clearing-house No. 11.

United States Depositary.

[Endorsed]: Pay to the Order of National Bank
of California, Los Angeles, Cal. Wm. R. Staats Co.
U. S. District Court, No. 235—Civil. Exhibit No.
"A." Filed Apr. 27, 1915. Helm, Referee, Special
Master. The National Bank of California. G. F.
Pickrell. [199]

*In the District Court of the United States, Southern
District of California, Southern Division.*

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of **FIELDING J. STILSON COMPANY**, a Corporation, Bankrupt,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY, a Corporation,

Defendants.

Notice of Appeal.

To O'Melveny, Stevens & Millikin and Walter K. Tuller, Attorneys for Defendants, and to Wm. M. Van Dyke, Esq., Clerk of the District Court of the United States, Southern District of California:

Sirs: **PLEASE TAKE NOTICE:** That Security Trust & Savings Bank, a corporation, Trustee in bankruptcy of Fielding J. Stilson Company, a corporation, bankrupt, hereby appeals from the minute order entered herein on the 16th day of July, 1915, and from the order signed and filed herein on the 20th day of July, 1915, and from each of said orders, sustaining the exceptions to the report of the Special Master in the above-entitled action, and ordering complainant's bill of complaint herein dismissed, to the Circuit Court of Appeals for the Ninth Circuit to be holden in and for said Circuit at the city and

county of San Francisco, in the State of California.

Dated this 26th day of July, 1915.

Yours, etc.

W. T. CRAIG,

Solicitor for Complainant. [200]

[Endorsed]: Original. No. 235. In United States District Court, Southern District of California, Southern Division. Security Tr. & Sav. Bank, a Corporation, Trustee, Complainant, vs. Wm. R. Staats Company, et al., Defendants. Notice of Appeal. Filed Jul. 26, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Receipt of Copy of the Within is Hereby Admitted this — day of July 26, 1915. O'Melveny, Stevens & Millikin, Walter K. Tuller, Attorneys for Defts. William T. Craig, Equitable Savings Bank Building, Los Angeles, Cal., Attorney for Complainant. [201]

In the District Court of the United States, Southern District of California, Southern Division.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of FIELD-
ING J. STILSON COMPANY, a Corporation,
Bankrupt,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COM-
PANY, a Corporation,

Defendants.

**Petition for Allowance of Appeal and Order
Allowing the Same.**

To the Honorable Judges of the United States
District Court for the Southern District of
California:

Security Trust & Savings Bank, a corporation,
Trustee in bankruptcy of Fielding J. Stilson Com-
pany, a corporation, bankrupt, conceiving itself
aggrieved by the minute order entered on the 16th
day of July, 1915, and by the decree filed and signed
on the 20th day of July, 1915, in the above-entitled
action, and by each of them, sustaining certain ex-
ceptions made to the Special Master's report in said
action, and ordering that complainant's bill of com-
plaint be dismissed, does hereby petition for an
appeal from the said order and decree and from
each of them, to the United States Circuit of Appeals
for the Ninth Circuit, and prays that its appeal
may be allowed and a citation granted directed to
the said Wm. R. Staats Company, a corporation, and
Title Insurance & Trust Company, a corporation,
commanding them to appear before the United
States Circuit Court of Appeals for the Ninth Cir-
cuit, to do and receive what may appertain to justice
to be done in the premises and that a transcript of
the records, proceedings [202] and evidence in
said action, duly authenticated, may be transmitted

to the United States Circuit Court of Appeals for
the Ninth Circuit.

SECURITY TRUST & SAVINGS BANK,
Complainant.

W. T. CRAIG,
Solicitor for Complainant.

The foregoing appeal is hereby allowed;

Dated July 26th 1915.

OSCAR A. TRIPPET,
United States District Judge.

[Endorsed]: Original. No. 235. In the United States District Court, Southern District of California, Southern Division. Security Tr. & Sav. Bank, a Corporation, Trustee, Complainant vs. Wm. A. Staats Company, et al. Defendant. Petition for Allowance of Appeal and Order Allowing the Same. Receipt of copy of the within is hereby admitted this ——day of July 26th, 1915. O'Melveny, Stevens & Millikin, Walker K. Tuller, Attorneys for Defts. William T. Craig, Equitable Savings Bank Building, Los Angeles, Cal., Attorney for Complainant. Filed Jul. 26, 1915, Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [203]

*In the District Court of the United States, Southern
District of California, Southern Division.*

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of FIELD-
ING J. STILSON COMPANY, a Corporation,
Bankrupt,

Complainant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COM-
PANY, a Corporation,

Defendants.

Comes now Security Trust & Savings Bank, a corporation, trustee in bankruptcy of Fielding J. Stilson, Company, a corporation, bankrupt, and files the following assignment of errors:

First. The United States District Court for the Southern District of California, Southern Division, erred in sustaining defendants' second exception to the report of the Special Master herein.

Second. Said Court erred in sustaining defendants' third exception to the report of the Special Master herein.

Third. Said Court erred in sustaining defendants' fifth exception to the report of the Special Master herein.

Fourth. Said Court erred in sustaining defendants' sixth exception to the report of the Special Master herein.

Fifth. Said Court erred in sustaining defend-

ants' seventh exception to the report of the Special Master herein.

Sixth. Said Court erred in sustaining defendants' eighth exception to the report of the Special Master herein.

Seventh. Said Court erred in ordering and adjudging that [204] the complainants' bill of complaint be dismissed.

Eighth. Said Court erred in not overruling each and every exception to said report of the Special Master herein.

Ninth. Said Court erred in that it did not order any decree that the deed of trust mentioned in complainant's bill was voidable by said complainant as such trustee and should be set aside, cancelled and annulled.

W. T. CRAIG,
Solicitor for Complainant.

[Endorsed]: Original. No. 235. In United States District Court, Southern District of California, Southern Division. Security Tr. & Sav. Bank, a Corporation, Trustee, Complainant, vs. Wm. A. Staats Company et al., Defendants. Assignment of Errors. Receipt of copy of the within is hereby admitted this — day of July 26, 1915. O'Melveny, Stevens & Millikin, Walter K. Tuller, Attorneys for Defts. William T. Craig, Equitable Savings Bank Building, Los Angeles, Cal., Attorney for Complainant. Filed Jul. 26, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [205]

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 235—CIVIL.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of **FIELD-
ING J. S. STILSON COMPANY**, a Corporation,
Bankrupt,

Complainant,

VS.

WM. R. STAATS COMPANY, a Corporation, and
**TITLE INSURANCE & TRUST COM-
PANY**, a Corporation,

Defendants.

Praecipe for Transcript of Record.

To the Clerk of said Court

Sir: Please issue a certified copy of the records in the above-entitled proceeding, consisting of the papers following:

1. Minute Order of July 16, 1915, made by said Court in said Action.

2. Enrolled papers consisting of Bill of Complaint, Subpoena, Answer to Bill of Complaint, Special Master's Report, Exceptions to Report of Special Master, and Decree.

3. Notice of Motion to refer to Special Master with Affidavit and Minute Order made March 5th, 1914, referring the issues in said Action to the Special Master.

4. Notice of Appeal.

5. Assignment of Errors.

6. Citation on Appeal.

7. Petition for Allowance of Appeal and Order allowing same.

8. Testimony taken before Lynn Helm, Special Master, including Defendants' Exhibit "A," being the check drawn to the order of Wm. R. Staats Company by Fielding J. Stilson Company, [206] dated March 15, 1912.

9. Schedules in Bankruptcy in the matter of Fielding J. Stilson Company, a corporation, bankrupt.

W. T. CRAIG,

Attorney for Complainant.

To the foregoing there shall be added the following stipulation:

IT IS STIPULATED between the parties that it is the fact that on the hearing of the motion to refer this cause to the Special Master, the defendants appeared and duly objected to the granting of said order; that said order was granted and made over the objections of defendants.

W. T. CRAIG,

Attorney for Complainant.

O'MELVENY STEVENS & MILLIKIN,

WALTER K. TULLER,

Attorneys for Defendants.

Receipt of a copy of the foregoing Praecipe is hereby admitted this 5th day of October, 1915, and it is stipulated and agreed that the papers mentioned and described therein are all the papers necessary to a determination by the Circuit Court of Appeals of

the appeal prosecuted by said complainant.

O'MELVENY STEVENS & MILLIKIN,
WALTER K. TULLER,

Attorneys for Defendants.

[Endorsed]: No. 235-Civil. In United States District Court Southern District of California Southern Division. Security Trust & Savings Bank, a corporation, trustee, complainant, vs. Wm. R. Staats Co. et. al., Defendants. Praeceptum for Transcript of Record. Filed Oct. 11, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. William T. Craig, 701 Higgins Bldg., Los Angeles, Cal., Attorney for Complainant. [207]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 235-CIVIL.

SECURITY TRUST & SAVINGS BANK, Trustee
in Bankruptcy of the Estate of FIELDING J.
STILSON, Bankrupt,

Complainant,

VS.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COM-
PANY, a Corporation,

Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court
of the United States of America, in and for the

Southern District of California, do hereby certify the foregoing two hundred and seven (207) type-written pages, numbered from 1 to 207, inclusive, to be a full, true and correct copy of the Bill of Complaint, Subpoena and respondendum, Answer to Bill of Complaint, Notice of Motion to Refer to Special Master, Minute Order Referring to Special Master, Special Master's Report, Exceptions to Report of Special Master, Minute Order of July 16, 1915, in re Exceptions, Decree, Transcript of Testimony, Notice of Appeal, Petition for Allowance of Appeal and Order Allowing, Assignment of Errors and Praecipe for Transcript of Record on Appeal in the above and therein entitled cause, also of the Schedules A and B, in the matter of Fielding J. Stilson, Bankrupt, No. 1045 Bkey., S. D., and that the same together constitute the record on appeal in said cause, as specified in the aforesaid Praecipe for Transcript of [208] Record, filed in my office on behalf of the appellant herein, by its solicitor of record;

I do further certify that the cost of the foregoing record is \$111.00, the amount whereof has been paid me by the Security Trust & Savings Bank, Trustee in Bankruptcy of the Estate of Fielding J. Stilson, Bankrupt, the appellant in said cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 23d day of November, in the year of our Lord one thousand nine hundred and fifteen, and of our

Independence the one hundred and fortieth.

WM. M. VAN DYKE,

Clerk of the District Court of the United States of
America, in and for the Southern District of
California.

By Leslie S. Colyer,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled
11/23/15. L. S. C.] [209]

[Endorsed]: No. 2691. United States Circuit
Court of Appeals for the Ninth Circuit Security
Trust & Savings Bank, a Corporation, as Trustee in
Bankruptcy of Fielding J. Stilson Company, a corpo-
ration, Bankrupt, Appellant, vs. Wm. R. Staats
Company, a corporation and Title Insurance & Trust
Company, a Corporation, Appellees. Transcript of
Record. Upon Appeal from the United States Dis-
trict Court for the Southern District of California,
Southern Division.

Filed November 30, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit,

By Meredith Sawyer,

Deputy Clerk.

[Order Enlarging Appellant's Time to November 1, 1915, to Docket Cause and File Record in U. S. Circuit Court of Appeals.]

In the United States Circuit Court of Appeals, Ninth Judicial Circuit.

SECURITY TRUST & SAVINGS BANK, a Corporation, Trustee in Bankruptcy of FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Appellant,

VS.

**WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY, a Corporation,**

Appellees.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said appellant to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 1st day of November, 1915.

Los Angeles, California, August 6th, 1915.

OSCAR A. TRIPPET,
United States District Judge, Southern District of California.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Security Trust & Savings Bank, a Corporation, Trustee, etc.,

vs. Wm. R. Staats Company, a Corporation, et al.
Order Extending Time to File Record. Filed Sep.
7, 1915. F. D. Monekton, Clerk.

**[Order Enlarging Appellant's Time to December 31,
1915, to Docket Cause and File Record in U. S.
Circuit Court of Appeals.]**

*In the United States Circuit Court of Appeals, Ninth
Judicial Circuit.*

SECURITY TRUST & SAVINGS BANK, a Cor-
poration, Trustee in Bankruptcy of FIELD-
ING J. STILSON COMPANY, a Corpora-
tion, Bankrupt.

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COM-
PANY, a Corporation,

Appellees.

Good cause appearing therefor, it is hereby OR-
DERED, that the time heretofore allowed said ap-
pellant to docket said cause and file the record
thereof with the clerk of the United States Circuit
Court of Appeals for the Ninth Circuit, be, and the
same is hereby enlarged and extended to and includ-
ing the 31st day of December, 1915.

Dated at Los Angeles, October 30th 1915.

OSCAR A. TRIPPET,

U. S. District Judge, Southern District of Califor-
nia.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Security Trust & Savings Bank, Trustee, etc., Appellant, vs. Wm. R. Staats Company et al., Appellees. Order Extending Time to File Record. Filed Nov. 1, 1915. F. D. Monckton, Clerk.

No. 2691. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Under Rule 16 Enlarging Time to Dec. 31, 1915, to File Record Thereof and to Declare Case. Refiled Nov. 30, 1915. F. D. Monckton, Clerk.

[Endorsed]: Printed Transcript of Record. Filed Dec. 20, 1915. F. D. Monckton, Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of
FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY, a Corporation,

Appellees.

Upon Appeal from the United States District Court
for the Southern District of California,
Southern Division.

PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the tenth day of February, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee, etc.,

Appellant,

vs.

WILLIAM R. STAATS COMPANY, a Corporation, and TITLE INSURANCE & TRUST COMPANY, a Corporation,

Appellees.

Order of Submission.

ORDERED appeal in the above-entitled cause argued by Mr. W. T. Craig, counsel for the appellant,—there being no appearance in open court of counsel for the appellees whose request, by telegraph, that the case on their behalf be submitted to the Court on the brief for the appellees, without oral argument, is hereby granted,—and submitted to the

Court for consideration and decision on the briefs for the respective parties.

At a stated term, to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eighth day of May, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF CERTAIN DECREES.

ORDERED, the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the clerk, and that a Decree be filed and recorded in the Minutes of this Court, in each of the causes in accordance with the opinion filed therein: Security Trust and Savings Bank, a Corporation, Trustee in Bankruptcy of Fielding J. Stilson Company, a Corporation, Appellant, vs. Wm. R. Staats Company, a Corporation, et al., Appellees. No. 2691. * * *

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

IN EQUITY—No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of
FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Appellant,

vs.

WILLIAM R. STAATS COMPANY, a Corporation, and TITLE INSURANCE & TRUST
COMPANY, a Corporation,

Appellees.

Opinion, U. S. Circuit Court of Appeals.

Upon appeal from the United States District Court for the Southern District of California.

This is a suit in equity between the Security Trust & Savings Bank, a corporation, trustee in bankruptcy of the estate of Fielding J. Stilson Company, a bankrupt corporation, and William R. Staats Company and Title Insurance & Trust Company, corporations.

The complaint alleges: That upon July 2, 1912, petition in involuntary bankruptcy was filed against the Stilson Company, and on October 24, 1912, the Stilson Company was adjudged a bankrupt; that on March 12, 1912, the Staats Company was a general unsecured creditor of the Stilson Company for \$3,870; that the Stilson Company was then insolvent, and the Staats Company knew, and had reasonable

cause to believe, that the Stilson Company was insolvent; that on March 19, 1912, the Stilson Company made and delivered to the Title Insurance & Trust Company a deed of trust for certain realty in Los Angeles, which was recorded on March 20, 1912, and was received as security for the indebtedness of \$3,870 due by the Stilson Company to the Staats Company; and it is alleged that the effect of the conveyance was to enable the Staats Company to receive a greater percentage of its indebtedness than any other creditors of the same class, and that the conveyance was made by the Stilson Company to give the Staats Company a preference in violation of the bankrupt statutes.

The trustee prays that the conveyance be vacated and declared void and that it be decreed that neither the Staats Company nor the Title Insurance Company has any right to the property described in the conveyance.

The Staats Company and the Title Insurance & Trust Company, by answer, admitted the execution and delivery of the conveyance, but denied that it operated as a preference, and set up that the Staats Company was a creditor of the Stilson Company and that the deed of trust was made under these circumstances: That on the 19th of March, 1912, and for months before then, the Stilson Company and the Staats Company were stock brokers in Los Angeles; that on March 15, 1912, the Stilson Company asked the Staats Company to sell it for cash certain shares in the Amalgamated Oil Company at \$64.50 per share, and that the Staats Company sold to

the Stilson Company 60 shares at \$64.50 and delivered the certificates of stock to the Stilson Company with an understanding and agreement between the Stilson Company and the Staats Company that the sale was made for cash; that the Stilson Company then delivered to the Staats Company its check on a bank in Los Angeles in payment for the stock, and that in due course the Staats Company presented the check, but was notified that the Stilson Company had no funds wherewith to pay the check, and that it had not had funds wherewith to pay the check when the same was drawn, and that payment was refused; that the Staats Company notified the Stilson Company of the refusal of the bank to pay the check, but that the Stilson Company assured the Staats Company that the Stilson Company was sound, but that certain funds which it had expected to receive had been slightly delayed in receipt, and that, for that reason, there were not funds on deposit sufficient to pay the check; that the Stilson Company then agreed that if the Staats Company would not exercise its right to rescind the sale, the Stilson Company would execute to the Staats Company its note for \$3,870, and to secure the note would make a deed of trust on the property described in the deed of trust heretofore referred to; that in pursuance of such agreement, the Staats Company refrained from exercising its right to rescind the sale, and accepted from the Stilson Company its note for \$3,870, and the deed of trust referred to. Good faith on the part of the Staats Company is pleaded, and it is averred that a present fair consideration

passed from the Staats Company to the Stilson Company for the deed of trust.

Over the objections of the defendants below (the Staats Company and the Title Insurance & Trust Company), the matter was referred to a special master to hear the issues raised by the complaint and the answer and to report the same to the District Court together with findings of fact and conclusions of law. Thereafter the special master made his findings to the effect that on March 19, 1912, the Stilson Company was insolvent; that the transfer made by the Stilson Company to the Title Insurance & Trust Company was made and received as security for an indebtedness of \$3,870 then due by the Stilson Company to the Staats Company, and that the effect of the transfer was to enable the Staats Company to obtain a greater percentage of its claim against the bankrupt than other creditors of the bankrupt of the same class, and that the Staats Company, when it received the transfer, had reasonable cause to believe that it was intended by the giving of the transfer to give a preference, and that the transfer was voidable at the instance of the trustee.

The Staats Company and the Title Insurance & Trust Company, defendants below, filed exceptions to the findings and report of the special master. The District Court, after overruling several exceptions and sustaining others, dismissed the complaint. From the judgment of dismissal the Security Trust & Savings Bank, as trustee of the Stilson Company, bankrupt, appeals.

Before GILBERT, ROSS, and HUNT, Circuit Judges.

HUNT, Circuit Judge, after stating the facts:

The appellant contends that the Court erred in sustaining the exceptions of the defendants:

To the finding of the special master that the deed of trust operated to enable the Staats Company to obtain a preference;

To the finding that the deed of trust was executed to secure an antecedent debt, and that the transaction between the Stilson Company, bankrupt, and the Staats Company, was not a single transaction;

To the finding that the 60 shares of stock had been hypothecated by the bankrupt prior to the execution of the trust deed; and

To the finding that the Staats Company, at the time of the execution of the deed of trust, had reasonable cause to believe that a preference was intended.

The history of the transaction involved, as gathered from the evidence, is in accord with the findings of the special master, and may be briefly stated as follows:

The Stilson Company was adjudged a bankrupt on October 24, 1912, upon an involuntary petition filed on July 2, 1912. The particular act which was made the basis of the adjudication in bankruptcy was that about March 14, 1912, while the Stilson Company was insolvent, it conveyed certain of its real property in Los Angeles to the William R. Staats Company with intent to hinder and delay the creditors of the Stilson Company, and with intent to prefer the Staats Company over other cred-

itors of the bankrupt. In due course of proceedings in the bankruptcy court, it was there found that on March 15, 1912, the Stilson Company was indebted in the sum of more than \$250,000, and that it had at that time assets of no greater value than \$215,000; and that on the 19th of March, when insolvent, the Stilson Company had conveyed the realty heretofore referred to to the Staats Company, then a creditor of the Stilson Company, with intent to prefer the Staats Company over its other creditors; and that the effect of the transfer was to enable the Staats Company to receive payment of a greater percentage of its debt than any other unsecured creditor of the bankrupt.

In the present suit it was found by the special master, and the evidence well sustains the finding, that on March 15, 1912, the Stilson Company, in due course of business, bought from the Staats Company 200 shares of Amalgamated Oil Company stock at \$64.50 per share. The Staats Company delivered certificates representing 60 shares, and gave a broker's due bill for 140 shares for subsequent delivery. On that day, March 15th, the bankrupt, to pay for the shares, gave its check for \$12,900 to the Staats Company, payable at the Citizens' National Bank of Los Angeles, but on presentation of the check to the bank it was rejected for want of funds and was returned. On March 16th, Mr. Jardine, vice-president of the Staats Company, had a talk with Mr. F. J. Stilson, president of the Stilson Company, concerning the rejected check, and was told by Stilson that the check would be made good, and Stilson asked

that it be put through the bank again. On Monday, March the 18th, the check was again presented at the bank, but rejected; and thereafter, again, on the 18th of March, Stilson, of the Stilson Company, asked an officer of the Staats Company to put it through the bank once more; but again it was rejected by the bank for want of funds to the credit of the Stilson Company. Thereupon, at a conference between Mr. Jardine, of the Staats Company, and Mr. Stilson, of the Stilson Company, Stilson said he expected payment of \$10,000 upon some real estate and that he would first take care of the "item" with the Staats Company; but on the 19th of March Stilson advised the Staats Company that he could not meet the payment, as the expected funds did not materialize, but that the Stilson Company had some realty in Los Angeles and would give the Stilson Company's equities as security. An employee of the Staats Company then went with Stilson to examine the real property offered as security, with the result that the real estate was accepted as security, and a trust deed was given by the Stilson Company on the afternoon of the 19th to the Title Insurance & Trust Company for the benefit of the Staats Company to secure a promissory note due one day after date in the sum of \$3,870, the price of the 60 shares of stock of the Amalgamated Oil Company which had been delivered by the Staats Company to the Stilson Company. On March 20th, at 9 o'clock, this deed of trust was put on record, and on that same morning the Stilson Company suspended, and thereafter did no business.

The evidence also sustains the finding to the effect that the due-bill for the 140 shares which had been given by the Staats Company to the Stilson Company, and the 60 shares also had been hypothecated by the Stilson Company, and there is no evidence to show that when the Staats Company agreed to give the Stilson Company time to obtain the money wherewith to meet its obligations, there was any suggestion of holding on to the stock which the Staats Company had sold to the Stilson Company. The Staats Company, with full knowledge of the rejection of the check, and without any then apparent thought of retaining a lien on the shares, expressly agreed with the Stilson Company to wait and again to put the check through the bank; and did so twice after it had first been rejected.

We agree with the special master in holding that when the Staats Company accepted the mortgage, it was in lieu of cash, and that the transaction became one where the debtor, to secure an existing antecedent debt due by it to the creditor, gave security, and the creditor, confirming the sale, accepted the security. We do not think that the transaction can be looked upon as a new and present advancement to the Stilson Company. It was a sale and delivery of the 60 shares of stock, and they became part of the general assets of the Stilson Company.

The evidence shows that the effect of the enforcement of the mortgage given by the Stilson Company when insolvent would be to give to the defendant the Staats Company a greater percentage of its claim against the bankrupt than other creditors of the

same class, and under the facts the bankrupt must be held to have given a preference by the giving of such security to the Staats Company.

Our further view is that the evidence sustains the finding of the special master to the effect that when the Staats Company received the trust deed from the Stilson Company it had reasonable cause to believe that it was intended to give a preference. There is ample evidence to show that the Staats Company must have known of the financial stress of the Stilson Company. Its officers knew when the mortgage was given that the Stilson Company then had checks outstanding, but rejected, and that the intent of the Stilson Company was to secure the Staats Company for the price of the 60 shares, it being in evidence that the Staats Company only wanted security for the 60 shares and did not recognize the due-bill for 140 shares. We must affirm the view of the special master in his conclusions that all the circumstances surrounding the transaction must have caused the Staats Company to believe that the Stilson Company was insolvent and that the effect of the mortgage would be to prefer the Staats Company; and we hold that the master was correct in finding that it was intended that the transaction should operate as a preference. *Sundheim v. Ridge Avenue Bank*, 138 Fed. 951; *In re Dorr*, 196 Fed. 292; *Hotchkiss v. National City Bank*, 201 Fed. 664, 231 U. S. 50.

Finally, we believe that the Staats Company became a general creditor of the bankrupt and that the transaction was broken in its continuity when

the Staats Company agreed to wait for its money and to send the check through the bank the second and third time, and when it agreed to wait to see whether the bankrupt would obtain money which its agents said was expected from the sale of certain other property, no effort having been made by the Staats Company to prevent the shares of stock which had been sold and delivered to the Stilson Company from passing out of the hands of the Stilson Company. That part of the argument made by the appellee in support of the action of the District Court wherein the point is made that the giving of the check by the Stilson Company was a representation that that corporation had sufficient funds to meet the check, and that, such representation not being true, a fraud was perpetrated on the Staats Company, and that title remained in the Staats Company and did not pass until the note and deed of trust were accepted, has received our careful consideration. But whatever right of rescission existed because of misrepresentation by the Stilson Company in giving the check was abandoned by the position taken when security was accepted for the purchase money. *Joslin v. Cowee*, 52 N. Y. 90; *Amer v. Hightower*, 70 Cal. 440; *Wendling Lumber Company v. Glenwood Lumber Company*, 153 Cal. 411.

The order of the District Court sustaining the exceptions to the report of the special master and dismissing the bill is reversed, and the cause is remanded with directions to overrule the exceptions to the report of the master and to enter a judgment in favor of the complainant.

[Endorsed]: Opinion. Filed May 8, 1916. F. D. Monekton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of FIELD-ING J. STILSON COMPANY, a Corporation, Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COM-
PANY, a Corporation,

Appellees.

Decree, U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the Southern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Southern Division, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the order of the said District Court sustaining the exceptions to the report of the special master and the decree dismissing the bill in this cause be, and hereby are, reversed, with costs in favor of the appellant and against the appellees, and that this cause be and

hereby is remanded to the said District Court, with directions to overrule the exceptions to the report of the master and to enter a judgment in favor of the complainant.

It is further ordered, adjudged and decreed by this Court that the appellant recover against the appellees for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and Entered May 8, 1916. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Friday, the second day of June, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2691.

SECURITY TRUST AND SAVINGS BANK, a
Corporation, as Trustee, etc.,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, et al.,
Appellees.

Order Directing Filing of Opinion on Petition for Rehearing, etc.

ORDERED that the Opinion this day rendered by this Court on the Petition for Rehearing filed by the appellees on the 29th day of May, A. D. 1916, in the above-entitled cause, be forthwith filed by the clerk, and that an order be entered denying said petition.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of FIELD-
ING J. STILSON COMPANY, a Corporation,
Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY,
a Corporation,

Appellees.

Opinion on Petition for Rehearing, U. S. Circuit Court of Appeals.

UPON MOTION FOR REHEARING.

PER CURIAM:

We have given attentive examination to the appellees' motion and brief for rehearing.

Stress is laid by the appellees upon the recent decision of the Supreme Court in Bailey, Trustee,

v. Baker Ice Machine Company, 239 U. S. 268. But the facts of that case are very different from those here involved. The statement by Justice Van Devanter shows that by a contract in writing it was there stipulated that the title to the machine installed should be and remain in the Baker Company until full payment of the purchase price; that the machine should be kept insured for the benefit of the Baker Company; that if default was made in the payment of the purchase price the Baker Company should have the right to resume possession and take the machine away; and that the Baker Company should have a right to file a mechanic's lien for materials and labor furnished under the contract. The Court held that the title to the property was retained in the vendor and that the contract had been rightly held to be one of conditional sale. Much closer to the present case are *National City Bank v. Hotchkiss*, 231 U. S. 50, and *Mechanics' Bank v. Ernst*, 231 U. S. 60, where the opinions and decisions appear to us to be in direct accord with our decision herein.

Motion for rehearing is denied.

[Endorsed]: Opinion on Petition for Rehearing.
Filed June 2, 1916. F. D. Monckton, Clerk.

At a stated term, to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Friday, the second day of June, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee, etc.,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, et al.,
Appellees.

Order Denying Petition for a Rehearing.

Pursuant to the direction of the Opinion this day filed in the above-entitled cause, ORDERED that the Petition, filed May 29, 1916, on behalf of the appellees, for a rehearing of the above-entitled cause be, and hereby is denied.

[Endorsed]: Praeceptum for Transcript of Record.
Filed July 6, 1916. F. D. Monekton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation,
as Trustee in Bankruptcy of **FIELD-
ING J. STILSON COMPANY**, a Corporation,
Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY,
a Corporation,

Appellees.

Order Staying Issuance of Mandate.

GOOD CAUSE appearing therefor, IT IS
HEREBY ORDERED that the issuance of mandate
on the decision heretofore rendered by this Court
be and the same is hereby stayed for 30 days or
until the further order of this court.

Dated, Los Angeles, California, June 6, 1916.

ERSKINE M. ROSS,

Circuit Judge.

WM. H. HUNT,

United States Circuit Judge.

[Endorsed]: Order Staying Issuance of Mandate.

Filed June 8, 1916. F. D. Monekton, Clerk.

*In the Circuit Court of Appeals of the United States
in and for the Ninth Circuit.*

IN EQUITY—No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of
FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Appellant,

VS.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY, a Corporation,

Appellees.

**Petition for, and Order Allowing Appeal to Supreme
Court U. S. and Fixing Amount of Bond.**

To the Honorable WILLIAM B. GILBERT, Senior
Circuit Judge, and the Honorable Judges of the
United States Circuit Court of Appeals in and
for the Ninth Circuit:

Come now William R. Staats Company and Title
Insurance and Trust Company, defendants in the
above-entitled action in the United States District
Court, and appellees in the said Circuit Court of
Appeals, by their solicitors, Messrs. Henry W.
O'Melveny, Henry J. Stevens, E. E. Millikin and
Walter K. Tuller, and complain that in the record
and proceedings and also in the rendition of the
decree or judgment of the United States Circuit
Court of Appeals for the Ninth Circuit, sitting at

San Francisco, in the State of California, in the above styled and numbered cause, on the 8th day of May, A. D. 1916, reversing the judgment and decree of the United States District Court in the Southern District of California, Southern Division, in said cause, manifest error has intervened to the great damage of these petitioners; that the jurisdiction of the District Court of the United States for the Southern District of California, Southern Division, in said cause, depended upon the following matters and things alleged in the Bill of Complaint in this action, to wit:

That Fielding J. Stilson Company, a corporation, had been by order of the United States District Court in and for the Southern District of California, Southern Division, declared and adjudged a bankrupt, and that complainant, the said Security Trust and Savings Bank, was the elected, qualified and acting trustee in bankruptcy of the estate of said Fielding J. Stilson Company; that prior to the time of the filing of the petition upon which said adjudication of bankruptcy was made, said Fielding J. Stilson had made, executed and delivered its promissory note in and for the sum of \$3,870.00, to the petitioner, William R. Staats Company, and had at the same time executed and delivered to the petitioner, Title Insurance and Trust Company, a deed of trust conveying to it, the said Title Insurance and Trust Company, certain real property to be held by it as trustee to secure the payment of said note according to its terms, all of which more

fully appears from the bill of complaint in this action, containing a copy of said note and said deed of trust, to which reference is hereby made; that said Security Trust and Savings Bank, as such trustee in bankruptcy of the Estate of said Fielding J. Stilson Company, asserted in said action that said deed of trust constituted an illegal preference under the bankruptcy laws of the United States; that on the day when said note and deed of trust were executed and at the time thereof said William R. Staats Company was a general unsecured creditor of said Fielding J. Stilson Company in the sum of \$3,870.00; that said Fielding J. Stilson Company was then insolvent; that on said date, and at said time, said William R. Staats Company knew and had reasonable cause to believe that said Fielding J. Stilson Company was insolvent; that the effect of said conveyance, that is said deed of trust, was and is to secure said William R. Staats Company and to enable it to receive a greater percentage of its indebtedness than any other creditors of the same class, to wit, general unsecured creditors; that said transfer of said property, that is to say, said deed of trust, was then and there made by said Fielding J. Stilson Company with the intent to give said William R. Staats Company a preference as a creditor of said Fielding J. Stilson Company in violation of the acts of Congress to establish a uniform system of bankruptcy in the United States; and in said action that complainant sought a decree that said deed and transfer be vacated, set aside and declared void, and that neither of said defendants,

that is, neither of these petitioners, has any right, title, interest, estate, claim or lien in or to said real property described in said deed of trust, or any part thereof, and for costs of suit and for such other and further relief in the premises as the court may require and as to the Court may seem meet and agreeable to equity. That the amount involved in said action and the matter in controversy exceeds the sum of \$1,000.00, besides costs and interest, and exceeds the amount of \$3,000.00, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final. An assignment of errors is filed herewith.

WHEREFORE, petitioners pray for the allowance of this appeal to the end that the cause may be carried to the Supreme Court of the United States. Petitioners pray that the mandate of this court be stayed pending the decision of the Supreme Court of the United States, and for such other process as is required to perfect the appeal prayed for to the end that the error therein may be corrected.

HENRY W. O'MELVENY,

HENRY J. STEVENS,

E. E. MILLIKIN,

WALTER K. TULLER,

Solicitors for said Petitioners.

The appeal prayed for in the foregoing petition is hereby allowed, and it is ordered that the mandate of this court be stayed pending the decision of the Supreme Court of the United States thereon, and bond is fixed in the sum of Five Thousand Dollars,

conditioned as the law directs, this 6 day of July, A. D. 1916.

WILLIAM H. HUNT,
Circuit Judge of the United States in and for the
Ninth Circuit.

Received copy of the within Petition this 3rd day
of July, 1916.

W. T. CRAIG,
Atty. for Appellant.

[Endorsed]: Petition for and Order Allowing
Appeal to Supreme Court U. S. and Fixing Amount
of Bond. Filed July 6, 1916. F. D. Monekton,
Clerk.

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

IN EQUITY—No. 2691.

SECURITY TRUST & SAVINGS BANK, a Cor-
poration, as Trustee in Bankruptcy of
FIELDING J. STILSON COMPANY, a Cor-
poration, Bankrupt,

Appellant,

vs.

WILLIAM R. STAATS COMPANY, a Corpora-
tion, and TITLE INSURANCE AND
TRUST COMPANY, a Corporation,

Appellees.

Assignment of Errors.

Come now William R. Staats Company and Title
Insurance and Trust Company, defendants and ap-

pellees herein, and file the following assignment of errors, and complain and specify that in the following respects, and each of them, the decision and judgment of the Honorable above-named Circuit Court of Appeals is erroneous and unjust to them:

FIRST: Because the Court held that the execution and delivery of the deed of trust referred to in the bill of complaint herein amounted to and constituted an illegal preference.

SECOND: In that the Court held that the said deed of trust constituted an illegal preference notwithstanding the fact that it clearly appears that all the transactions between Fielding J. Stilson Company and said William R. Staats Company occurred after the said Fielding J. Stilson Company was bankrupt, which transaction or transactions constituted the following, to wit; The sale for cash by said Staats Company to said Stilson Company of certain shares of stock, the market value of which was equal to, or greater than, the sum of \$3,870.00, for which a worthless check was given, after which the Stilson Company executed and delivered, in payment for said stock, the said note and deed of trust set out in the bill of complaint herein.

THIRD: In that the said Honorable Court did not hold and determine that title to said shares of stock did not pass until the acceptance by said Staats Company of the said note and deed of trust, and particularly for the following reasons:

(a) That the sale being a cash transaction, and the price not having been paid at the time, title did not pass but remained in the said Staats Company,

and the sale was consummated only when said Staats Company accepted said note and deed of trust.

(b) That possession of certificates representing said stock having been acquired by the fraud of said Stilson Company in giving a worthless check, title to said stock did not pass but remained in said Staats Company until said Staats Company accepted said note and deed, at which time said sale was consummated.

FOURTH: In that the said Honorable Court should have held that said Staats Company had a right to rescind the said transaction and retake possession of said stock on account of the fraud of the Stilson Company in giving a worthless check in payment and that its surrender of this right in consideration of the execution to it of the secured note constituted a present fair consideration and a fair exchange of value. Therefore, that the receipt by it of said secured note was not and is not an illegal preference.

FIFTH: In that said Honorable Circuit Court of Appeals held that the evidence showed that the effect of the enforcement of said note and deed of trust will be to enable said Staats Company to secure a greater percentage of its claim than any other creditor of the same class, whereas, the evidence does not show this to be true.

SIXTH: In that said Honorable Circuit Court of Appeals should have held that the entire dealings between said Staats Company and said Stilson Company constituted one transaction, the net result of

which was not to diminish the bankrupt estate, and which is not, therefore, an illegal preference.

SEVENTH: In that said Honorable Circuit Court of Appeals should have held that said Staats Company at the time it accepted said note and deed of trust did not have reasonable cause to believe that said Stilson Company was insolvent.

EIGHTH: In that said Honorable Circuit Court of Appeals should have held that at the time said note and deed of trust were accepted said Staats Company gave a present fair consideration therefor, particularly in that it passed title to said stock, waived the right to retake possession of the same, and waived the right to rescind the transaction for the fraud of said Stilson Company in giving a worthless check in purported payment therefor.

NINTH: In that said Honorable Circuit Court of Appeals should have ordered the affirmance of the judgment of the Honorable District Court in said cause.

WHEREFORE, these parties pray that the said decree of the Honorable Circuit Court of Appeals be reversed and the judgment of the said Honorable District Court be affirmed, and that such other orders and decrees in the premises be made as shall effect an affirmance of the decree rendered by said Honorable District Court and secure to these parties

their costs and all further relief to which they may be entitled.

HENRY W. O'MELVENY,
HENRY J. STEVENS,
E. E. MILLIKIN,
WALTER K. TULLER,

Attorneys and Solicitors for said William R. Staats Company and Title Insurance and Trust Company.

Received copy of the within Assignment of Errors, this 3d day of July, 1916.

W. T. CRAIG,
Atty. for Appellant.

[Endorsed]: Assignment of Errors. Filed July 6, 1916. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of FIELDING J. STILSON COMPANY, a Corporation, Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY, a Corporation,

Appellees.

Undertaking on Appeal to Supreme Court.

KNOW ALL MEN BY THESE PRESENTS, that we, Wm. R. Staats Company and Title Insurance & Trust Company, as principals, and United States Fidelity & Guaranty Company, a corporation duly incorporated, organized and existing under the laws of the State of Maryland, and authorized by its articles of incorporation to act as surety upon bonds and undertakings and authorized by the laws of California to act as surety upon bonds and undertakings in the State of California, are held and firmly bound unto Security Trust & Savings Bank, a corporation, as Trustee in Bankruptcy of the Estate of Fielding J. Stilson Company, bankrupt in the sum of FIVE THOUSAND DOLLARS (\$5,000), lawful money of the United States, to be paid to it and its successors and assigns; to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and each of our heirs, executors, administrators and representatives by these presents.

Sealed with our seals and dated this 15th day of July, 1916.

WHEREAS, the above-named Wm. R. Staats Company and Title Insurance & Trust Company have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment of the Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Wm. R.

Staats Company and Title Insurance & Trust Company shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

WM. R. STAATS COMPANY,
By JOHN EARLE JARDINE,
Vice-Prest.

[Seal] B. G. McMEEHEN,
Secy. Pro tem.

TITLE INSURANCE & TRUST COMPANY,

By WILLIAM H. ALLEN, Jr.,
President.

[Seal] W. B. BROWN,
Assistant Secretary.

UNITED STATES FIDELITY & GUARANTY COMPANY,

[Seal] By W. H. SCHRODER,
Its Attorney in Fact.

The foregoing bond is approved both as to sufficiency and form this 20th day of July, 1916.

WM. H. HUNT,
Circuit Judge.

State of California,
County of Los Angeles,—ss.

On this 15th day of July, in the year one thousand nine hundred and sixteen, before me, Hallie D. Winebrenner, a notary public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. H. Schroder, known

to me to be the duly authorized attorney in fact of the United States Fidelity and Guaranty Company, and the same person whose name is subscribed to the within instrument as the attorney in fact of said company, and the said W. H. Schroder duly acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto as Principal and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] HALLIE D. WINEBRENNER,
Notary Public in and for Los Angeles County, State
of California.

Received a copy of the within Undertaking on Appeal this 17th day of July, 1916.

W. T. CRAIG,
Attorney for Appellant.

[Endorsed]: Undertaking on Appeal to Supreme Court U. S. Filed July 20, 1916. F. D. Monekton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of FIELD-
ING J. STILSON COMPANY, a Corporation,
Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY,
a Corporation,

Appellees.

Praeceptum for Transcript of Record.

To the Clerk of the said Court:

Sir: Please make and furnish us with a certified printed transcript of the record (including the proceedings had in said Circuit Court of Appeals) in accordance with the rules of the Supreme Court of the United States and not less than thirty (30) uncertified copies thereof for use on appeal to the Supreme Court of the United States in the above-entitled cause, the said transcript to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in said Circuit Court of Appeals, to which will be added a printed copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz.:

2. Order of Submission, entered Feb. 10, 1916;
3. Order Directing Filing of Opinion, etc., entered May 8, 1916;
4. Opinion, filed May 8, 1916;
5. Decree, filed and entered May 8, 1916;
6. Order Directing Filing of Per Curiam Opinion on Petition for Rehearing, etc., entered June 2, 1916;
7. Opinion on Petition for Rehearing, filed June 2, 1916;
8. Order Denying Petition for Rehearing, entered June 2, 1916;
9. Order Staying Issuance of Mandate, filed June 8, 1916;
10. Petition for and Order of Allowance of Appeal to Supreme Court of the United States, filed July 6, 1916.
11. Assignment of Errors on said Appeal, filed July 6, 1916;
12. Bond on said Appeal, filed July 20, 1916;
13. Citation on said Appeal, filed July 20, 1916;
14. Praecipe for Record on said Appeal, filed July 6, 1916;
15. Clerk's Certificate to Transcript of Record on Appeal.

Please prepare the thirty or more certified printed copies of the said record, by printing thirty or more copies of the above-mentioned proceedings, that were had and papers that were filed in said cause in said Circuit Court of Appeals, and by binding one of the latter printed copies of said proceedings at the end of each of the thirty or more extra copies of the

printed transcript of record, on which said cause was heard in said Circuit Court of Appeals.

O'MELVENY, STEVENS & MILLIKIN,

Counsel for Appellees.

Service of copy of foregoing praecipe admitted this 3d of July, 1916.

W. T. CRAIG,

Atty. for App. Sec.

[Endorsed]: Praecipe for Transcript of Record.
Filed July 6, 1916. F. D. Monekton, Clerk.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of **FIELD-
ING J. STILSON COMPANY**, a Corporation,
Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY,
a Corporation,

Appellees.

**Certificate of Clerk U. S. Circuit Court of Appeals
to Transcript of Record Upon Appeal to the
Supreme Court of the United States.**

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and seventy-one (271) pages, numbered from and including 1 to and including 271 to be a true copy of the record, and of the Assignments of Error, and of all proceedings in the above-entitled case made up pursuant to the praecipe filed by counsel for the appellees on the 6th day of July, A. D. 1916, under Rule 8 of the Supreme Court of the United States, in the above-entitled case, as the originals thereof remain on file and appear of record in my office, and that the same constitute the Transcript of Record upon Appeal to the Supreme

Court of the United States in the above-entitled case,
as made and certified pursuant to said praecipe.

ATTEST my hand and the Seal of the said the
United States Circuit Court of Appeals for the Ninth
Circuit, at the City of San Francisco, in the State of
California, this twenty-eighth day of July, A. D.
1916.

[Seal]

F. D. MONCKTON,

Clerk.

By Paul P. O'Brien,

Deputy Clerk.

[Canceled U. S. Internal Revenue 10-cent Docu-
mentary Stamp.]

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 2691.

SECURITY TRUST & SAVINGS BANK, a Corporation, as Trustee in Bankruptcy of **FIELDING J. STILSON COMPANY**, a Corporation, Bankrupt,

Appellant,

vs.

WM. R. STAATS COMPANY, a Corporation, and
TITLE INSURANCE & TRUST COMPANY,
a Corporation,

Appellees.

Citation on Appeal to Supreme Court.

The President of the United States to Security Trust
& Savings Bank, a Corporation, Greeting:

YOU ARE HEREBY cited and admonished to appear in the United States Supreme Court in the City of Washington, D. C., on the fifth day of September, 1916, pursuant to the appeal duly obtained and filed in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein you, as complainant, are appellee, and William R. Staats Co. and Title Insurance & Trust Company are the appellants, to show cause, if any there be, why the judgment and decree in said appeal mentioned should not be reversed and corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. HUNT,
United States Circuit Judge, in and for the Ninth
Circuit, on the 7th day of July, in the year of our
Lord, one thousand nine hundred and sixteen.

WILLIAM H. HUNT,
U. S. Circuit Judge.

Received a copy of the within Citation on Appeal
this 17th July, 1916.

W. T. CRAIG,
Attorney for Appellant.

[Endorsed]: Citation on Appeal to Supreme Court
U. S. Filed July 20, 1916. F. D. Monckton, Clerk.
By Paul P. O'Brien, Deputy Clerk.

SUPREME COURT

OF THE
UNITED STATES.

Wm. R. Staats Company, a corporation, and Title Insurance & Trust Company, a corporation,
Appellants,

vs.

Security Trust & Savings Bank, a corporation, as Trustee in Bankruptcy of Fielding J. Stilson Company, a corporation, bankrupt,
Appellee.

MOTION TO DISMISS APPEAL.

Comes now the appellee herein by Jefferson P. Chandler, Esq., and W. T. Craig, its counsel, appearing in that behalf, and moves the court to dismiss the appeal in the above-entitled cause for want of jurisdiction because said action is one commenced by said appellee as the

Trustee in bankruptcy, of the bankrupt above named, to obtain a decree under section 60b and 67e of the Bankruptcy Act of 1898 as amended, declaring a certain transfer obtained by said appellants from said bankrupt to be a voidable preference and that such transfer be set aside, cancelled and annulled; and because consequently the judgment and decree of the Circuit Court of Appeals in said action is and was final for the reason that said judgment and decree was given in a proceeding and case arising under the Bankruptcy Act and in a controversy arising in such a proceeding and case.

JEFFERSON P. CHANDLER,

W. T. CRAIG,

Counsel for Appellee for the Purposes of this Motion.

(Original filed October 3rd, 1916, service thereof being acknowledged by attorneys for appellants on Sept. 26, 1916.)

SUPREME COURT

OF THE
UNITED STATES.

OCTOBER TERM 1916.

No. 608.

Wm. R. Staats Company, a corporation, and Title Insurance & Trust Company, a corporation,

Appellants,

vs.

Security Trust & Savings Bank, a corporation, as Trustee in Bankruptcy of Fielding J. Stilson Company, a corporation, bankrupt,

Appellee.

APPEAL FROM THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT.

Notice of Hearing of Motion to Dismiss Appeal.

To Messrs. Henry W. O'Melveny, Henry J. Stevens, E. E. Millikin and Walter K. Tuller, Attorneys and Solicitors for Appellants:

Please take notice that on Monday, the 8th day of January, 1917, at the opening of the

court, or as soon thereafter as counsel can be heard, the motion, of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the court thereon. Annexed hereto is a copy of the brief of argument to be submitted with the said motion in support thereof.

JEFFERSON P. CHANDLER,
*Attorney and Solicitor for the Appellee for the
Purposes of the Motion.*

W. T. CRAIG,
Of Counsel.

(Original notice filed herein, service thereof being acknowledged by attorneys for appellants on Nov. 23rd, 1916.)

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM 1916.

No. 608.

Wm. R. Staats Company, a corporation, and Title Insurance & Trust Company, a corporation,
Appellants,

vs.

Security Trust & Savings Bank, a corporation, as Trustee in Bankruptcy of Fielding J. Stilson Company, a corporation, bankrupt,

Appellee.

APPEAL FROM THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT.

Brief of Appellee on Motion to Dismiss Appeal.

STATEMENT OF THE CASE.

On the 22nd day of January, A. D. 1913, the Security Trust & Savings Bank, a corporation, as trustee in bankruptcy of the estate of Fielding J. Stilson Company, a bankrupt, filed a bill

of complaint in the District Court of the United States for the Southern District of California, Southern Division, praying that a decree be granted adjudging and decreeing that a certain deed of trust, made by said bankrupt within four months prior to the filing of the bankruptcy petition, transferring certain property to the Title Insurance & Trust Company, as trustee for the Wm. R. Staats Company, be vacated, set aside and declared void, and that said defendants have no interest, estate, claim or lien in, on or to any of the property described therein, by reason of the fact that said deed of trust constituted an unlawful preference under the Bankruptcy Act. The bill of complaint was answered and the cause was tried before a special master who reported in favor of a decree for complainants and thereafter the District Court of the United States for the Southern District of California, sustained certain exceptions of the defendants to the special master's report, and ordered that the bill of complaint be dismissed. On the 26th day of July, 1915, an appeal was allowed by the judge of said District Court to the United States Circuit Court of Appeals, Ninth Circuit. Thereafter on the 10th day of February, 1916, the cause was heard by the Circuit Court of Appeals for the Ninth Circuit. On the 8th day of May, 1916, decree was entered in said cause by said Circuit Court of

Appeal for the Ninth Circuit, "directing that the order of said District Court sustaining such exceptions and dismissing said bill be reversed and the cause be remanded with instructions to overrule such exceptions and render judgment in favor of appellant." (See 233 Fed. 514.) Thereafter on the . . . day of July, 1916, Wm. R. Staats Company and Title Insurance & Trust Company, appellees in said action, filed a petition in the Supreme Court of the United States for a writ of *certiorari*. This is case No. 598, October term 1916, of this court. The respondent, Security Trust & Savings Bank, filed no brief on said petition for the reason that in our opinion a perusal of the transcript would at once show that no new question was involved in the case, nor was any point of law of general importance, necessary to the uniform administration of the Bankruptcy Act, involved in the case. The action was an ordinary one to set aside a preference and was determined upon conflicting evidence. It was not thought necessary to answer the brief filed in support of the petition for the reason that in our opinion a reading of the brief of petitioner would itself dispose of the petition.

Notwithstanding the fact that a petition for a writ of *certiorari* was filed in this court, an appeal was taken to this court on the . . . day of July, 1916, from the decree of the United

States Circuit Court of Appeals and the transcript on appeal has been filed herein, the case being numbered 608, October term, 1916. Thereafter a motion to dismiss the said appeal was filed herein, a copy of which is hereinbefore set out.

ARGUMENT.

By section 4, Act of Congress, approved January 28th, 1915 (vol. 38, statutes at large, page 804), it was enacted:

"That the judgments and decrees of the Circuit Courts of Appeals in all proceedings and cases arising under the Bankruptcy Act and in all controversies arising in such proceedings and cases shall be final, save only that it shall be competent for the Supreme Court to require by *certiorari*," etc.

Appellee herein contends that the present appeal has been taken from a decree of the Circuit Court of Appeals in a case arising under the Bankruptcy Act.

"A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his

creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required."

Bankruptcy Act, 1898, sec. 60a.

"If a bankrupt shall have procured or suffered a judgment to be entered against him in favor of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt is insolvent and the judgment or transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person. And for the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

Bankruptcy Act, 1898, sec. 60b.

The action in the present case was one commenced under section 60b of the Bankruptcy Act. This action could arise in no other way than under the Bankruptcy Act. The complainant was merely enforcing a remedy given to it under the Bankruptcy Act and in order to recover must, of course, have satisfied by proof, all of the requirements of the Bankruptcy Act. It is difficult to understand how it can be contended that the case is not one arising under the Bankruptcy Act. Apparently the appellants, in applying for leave to take this appeal, presented the argument to the Circuit Court of Appeals that the case was not one arising in the Bankruptcy proceeding. It is perfectly plain that the Act of Congress not only covers proceedings arising under the Act and controversies arising in these proceedings, but plainly provides for suits commenced under the authority of the Act.

In passing upon the question as to whether the foregoing Act of Congress excluded cases requiring interpretation of state statutes and application of the Federal Constitution, this court said in a recent case:

"We see no reason to doubt that the plain language of the enactment aptly expresses the fixed legislative intent."

Central Trust Co. v. Lueders Co., 239
U. S. 11.

See also the case of Frank R. Shattuck, Trustee, *et al.*, Appellants, vs. Title Guaranty & Surety Company (No. 729) dismissed for want of jurisdiction upon the authority of the above Act of Congress of January 28th, 1915.

While we find no written opinion of this court declaring the law to be that suits to recover preferences come with the purview of the above Act of Congress, this court in deciding appeals taken in actions to recover preferences, has explained that the writ of error was taken out before the passage of the Act of January 28th, 1915. By inference it is to be assumed that this court would not have considered these appeals or writs of error if they had been taken subsequent to the passage of the above Act of Congress.

See:

Elwyn H. Johnson, Trustee, v. Root Mfg. Co., 241 U. S. 160.

We are unable to see why the plain language of the enactment of Congress does not prohibit the appeal taken in this action, and respectfully submit that said appeal should be dismissed.

Respectfully submitted,

JEFFERSON P. CHANDLER,
Attorney for Appellee.

W. T. CRAIG,
Of Counsel.



SUPREME COURT

OF THE

UNITED STATES.

Wm. R. Staats Company, a corporation, and Title Insurance & Trust Company, a corporation.

Appellants,

vs.

Security Trust & Savings Bank, a corporation, as Trustee in Bankruptcy of Fielding J. Stilson Company, a corporation, Bankrupt,

Appellee.

Appellants' Brief in Response to Motion to Dismiss.

As shown in the statement of facts contained in the brief of appellee this case is not a proceeding in bankruptcy, but is an independent suit in equity brought in the United States District Court. It involves the requisite amount for jurisdiction to be in this court. It is the contention of appellants that this court has jurisdiction under section 128 and 241 of the Judicial Code, and that the jurisdiction over cases in equity so conferred upon this court is

not taken away by the Act of January 28th, 1915. This case is clearly appealable to this court unless said Act of January 28th, 1915, applies to independent suits in equity. It is the contention of appellants that the Act of 1915 was not intended to apply to independent suits in equity and that said act was not intended to and does not have the effect of an implied repeal or modification of section 128 or section 241 of the Judicial Code. It is to be noted in the beginning that the appellant Staats Company was never a party to any case or proceeding in bankruptcy. It never filed a claim for money. It never intervened in the bankruptcy proceedings. It never even appeared and asked to have any lien adjudged. It did nothing with reference to any bankruptcy proceeding. It did nothing until it was summoned into an equity court of the United States to answer a suit in equity brought against it, involving an amount sufficient to give this court jurisdiction; it won the case in the District Court; on appeal to the Circuit Court of Appeals the judgment was reversed, and it contends that it is entitled to the same rights of appeal to this court as any other party to a suit in equity involving a like amount.

The principle is, of course, well settled and fundamental that repeals by implication are not favored. Section 128 of the Judicial Code provides that "except as provided in sections 439

and 240 the judgments and decrees of the circuit courts of appeal shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states; also in all cases arising under the patent laws, under the trade mark laws, under the copyright laws, under the revenue laws, and under the criminal laws and in admiralty cases." If the Act of 1915 is applicable to an independent suit in equity, it must impliedly modify said section 128. The Act of 1915 itself, we submit, bears internal evidence that it was not intended to modify or amend section 128, but was intended to apply to bankruptcy cases and proceedings as such and not to independent suits in equity. The act reads: "that the judgments and decrees of circuit courts of appeal in all proceedings and cases arising under the Bankruptcy Act and in all *controversies* arising in *such* proceedings and cases shall be final," etc. Under fundamental principles of construction a construction should be adopted which will give a reasonable effect to all parts and clauses of the statute. If the act had been intended to have any such broad and universal application as is intended by appellee there would have been no need whatever for the clause "and in all controversies arising in such proceedings and cases." This

clause, however, clearly shows that Congress considered that there might be "controversies" arising in the "cases" to which the act applies, for the clause quoted says controversies arising in *such cases*, as well as proceedings. The word "such" applies equally to cases as to proceedings. For the purposes of this discussion, therefore, the act may be considered as if it read "the judgments and decrees of the circuit courts of appeal in all * * * cases arising under the Bankruptcy Act and in all controversies arising in such * * * cases" shall be final. We submit, therefore, that this language clearly shows Congress intended this act to apply to those cases and proceedings in which "controversies" might arise and which, except for the act, might be appealable to this court; in other words, to the multitudinous cases and proceedings which arise in bankruptcy proper as distinguished from independent suits in equity such as the case at bar. Clearly it would be an idle, useless and meaningless thing for Congress to say "that the judgments and decrees of the circuit courts of appeal in all controversies arising in an independent suit in equity" shall be final. If the act be construed as applying to cases of the kind of the one at bar, the entire clause is meaningless and of no effect. But such language is directly appropriate to the multitudinous cases and controversies which arise in bankruptcy

proper. The case of Central Trust Company of Illinois v. Luders, 239 U. S. 11, cited by appellee, illustrates this very point. In that case Rhinestrom & Sons Company having been declared bankrupt, certain creditors filed a petition in the bankruptcy case or proceeding to have it established that their claims were entitled to priority over the claims of other creditors. It appears that pleadings were filed and a trial had *in the bankruptcy matter*. This clearly was one of the cases to which the Act of 1915 was intended to apply. It was not an independent suit at all. It was either a "case" or a "controversy arising in a case" arising under the Bankruptcy Act. This court, of course, dismissed the attempted appeal from the judgment of the Circuit Court of Appeals. But that decision is in no sense an authority in the question now before the court. Indeed, if anything, we submit it is rather favorable to the appellant, since it affords a clear illustration of the class of "cases"—not independent suits—to which we claim the act was intended to apply.

Shattuck v. Title Guaranty & Surety Company (No. 729), 239 U. S. 637, referred to by appellee, is of a similar nature, as appears from the prior reports of that case in 222 Fed. 126 and 224 Fed. 401. That was a case which arose

by the filing of certain petitions in a bankruptcy proceeding whereby certain creditors presented claims for what amounted to preferential payments or dividends. The case was heard and determined in the bankruptcy proceeding. The case so made was plainly a case arising under the Bankruptcy Act; naturally, the attempted appeal to this court was dismissed. It is no authority at all, however, in the case at bar; rather, we submit, it also illustrates the kind of cases arising under the Bankruptcy Act to which the statute was intended to apply.

The principle and distinction between independent suits and cases or proceedings under the Bankruptcy Act has been noted and discussed in many cases. It is felt not to be necessary to refer to any others, however, than the leading case of *Bardes v. Hawarden Bank*, 178 U. S. 524, and the elaborate discussion contained in the opinion in that case.

If there is a fair doubt as to whether the statute relied on by appellee applies to cases of such a character as the one at bar, it ought, we submit, to be resolved in favor of the jurisdiction of this court. Prior to the enactment of said statute this court plainly had jurisdiction under sections 128 and 241 of the Judicial Code. It ought not be held, we submit, that parties have been deprived of a right given by this code (which, as a matter of current history, it

is well known was adopted only after careful and mature consideration), by an act subsequently adopted, unless the intention to take away such right clearly appears. Moreover, if there be a fair doubt as to whether it was the intention of Congress that such a statute should apply to independent suits like the case at bar, it should be held that this court still has jurisdiction for the additional reason that the appellate jurisdiction of this court is conferred by the Constitution and not by Congress. While it is, of course, competent for Congress to limit the appellate jurisdiction of this court, still its constitutional jurisdiction exists except as so limited, and if there be a fair doubt as to the intent of Congress with reference to a particular class of cases, it should be held, we submit, that the constitutional jurisdiction has not been taken away. As was said by Chief Justice Marshall in the early and leading cases of *Duroseau v. United States*, 6 Cranch. 307, at pages 313 and 314:

“It is contended, that the words of the Constitution vest an appellate jurisdiction in this court, which extends to every case not excepted by Congress; and that if the court had been created, without any express definition or limitation of its powers, a full and complete appellate jurisdiction would have vested in it, which must have been exercised in all cases whatever. The force of this argument is perceived and admitted.

Had the judicial act created the Supreme Court, without defining or limiting its jurisdiction, it must have been considered as possessing all the jurisdiction which the Constitution assigns to it. The legislature would have exercised the power it possessed of creating a Supreme Court, as ordained by the Constitution; and in omitting to exercise the right of excepting from its constitutional powers, would have necessarily left those powers undiminished. The appellate powers of this court are not given by the judicial acts. They are given by the Constitution."

The following language used by this court in deciding the case of *United States v. American Bell Telephone Company*, 159 U. S. 458, also appears appropriate:

"The Supreme Court has appellate jurisdiction, under the Constitution, in all cases to which the judicial power extends (other than those in respect of which it has original jurisdiction), 'with such exceptions and under such regulations as the Congress shall make.' It was early held that in the passage of the judiciary act of 1789, Congress was executing the power of making exceptions to the exercise of appellate jurisdiction, and that the affirmative description of the cases to which the appellate power extended was to be understood as implying a negative on the exercise of such appellate power as was not comprehended within it, but that as this restriction rested on implication bounded on the manifest intent of the legislature, it could be sustained *only when that manifest intent appeared.*

Durousseau v. United States, 6 Cranch. 307." (*Italics ours.*)

Certainly, we submit, this act does not show any manifest intent to take away the right of appeal in equity cases of this character, given by the Judicial Code as originally adopted.

There is indeed another evidence that it was not so intended. Section 128 of the Judicial Code purports to state all that class of *general* cases (as distinguished from what may fairly be termed special cases such as cases and proceedings in bankruptcy) in which the jurisdiction of the Circuit Court of Appeals shall be final. If it had been intended that the jurisdiction of the Circuit Court of Appeals should be final in general cases in the equity courts of the United States—such as the one at bar, the natural and appropriate thing for Congress to have done would have been to include such provision in section 128. It did not do so. This is, we submit, strong evidence that it did not so intend. Moreover, and as further strengthening this view, section 128 of the Judicial Code was actually amended at the same time that the statute upon which appellee relies was enacted. That section, as heretofore pointed out, was enacted for the purpose of defining that class of *general* litigation in which the decision of the Circuit Court of Appeals should be final. But

no provision was inserted in it which would cover a case like the one at bar. Thus, we submit, very strong evidence is furnished to the effect that Congress did not intend that the statute should apply to what we have termed general litigation or independent cases in equity such as the one at bar.

Moreover, the case at bar presents another question, or perhaps more accurately two allied questions, which, we submit, gives this court appellate jurisdiction of the cause. That question is the one as to the constitutionality of section 23B of the Bankruptcy Act as it now stands, by which Congress attempts to vest in the Federal Courts jurisdiction of suits "for the recovery of property under section 60 subdivision B and section 67 subdivision E and section 70 subdivision E," entirely irrespective of the citizenship of the bankrupt, of the complainant or of the defendant, which question also involves, of course, a construction of the Constitution. In the case at bar, the complainant-trustee, the bankrupt and the defendants were and are all corporations organized under the laws of the state of California. It involved the validity of title to real estate in California claimed by defendants. All this is shown by the bill of complaint. The case, therefore, as made by the bill of complaint, squarely pre-

sented the question whether the judicial power of the United States extends to the determination of the validity of the title to real property held by a citizen of a state which was acquired from a person later declared a bankrupt, such person being a citizen of the same state, and his trustee in bankruptcy being a citizen of the same state. This question, of course, necessarily involves a question of the construction of the Constitution. It is our contention that under the limitations upon the judicial power of the United States, that power does not extend to such a case; therefore, that the act of Congress purporting to give to the Federal courts jurisdiction over such a case is unconstitutional. As was said by this court in *Eyster v. Gaff*, 91 U. S. 521, and quoted with approval in *Bardes v. Hawarden Bank*, 178 U. S., at pages 532 and 533, after referring to the opinion said to have been quite prevalent that the moment a man is declared bankrupt "the District Court which has so adjudged draws to itself by that act not only all control of the bankrupt's property and credits, but that no one can litigate with the assignee contested rights in any other court, except in so far as the Circuit Courts have concurrent jurisdiction, and that other courts can proceed no further in suits of which they had at that time full cognizance; and it was a prev-

alent practice to bring any person, who contested with the assignee any matter growing out of disputed rights of property or of contracts, into the bankrupt court by the service of a rule to show cause, and to dispose of their rights in a summary way. *This court has steadily set its face against this view. The debtor of a bankrupt, or the man who contests the right to real or personal property with him, loses none of those rights by the bankruptcy of his adversary. The same courts remain open to him in such contests, and the statute has not diverted those courts of jurisdiction in such actions.*" (Italics ours.)

As so forcefully stated in the language we have quoted, the debtor of the bankrupt, or the man who contests the right to real or personal property with him, loses none of those rights by the bankruptcy of his adversary. The appellants here, citizens of California, were contesting the title to real property situate in California with other persons, also citizens of California. They would have had a right had it not been for the bankruptcy to have had such contest heard and determined in courts other than the courts of the United States. Congress would have no power to require them to have such contest determined in the courts of the United States. As held in the cases to which we have referred they lose none of their rights

by the fact of the bankruptcy. Can it be that Congress can now compel them to try their title in a United States Court? If so, it must be by virtue of the provision of the Constitution authorizing Congress to establish a "uniform system of bankruptcy throughout the United States." But does this authorize Congress to compel the trial of title to real estate, between citizens of the same state, in courts of the United States? If this power to establish a *system* of bankruptcy goes so far as to authorize Congress to provide where and how such cases shall be tried, why may not Congress compel parties to try such cases in the bankruptcy court itself, and even in a summary manner? If it may compel a title acquired within four months of filing a petition in bankruptcy to be so tried, why not one acquired within four years? We respectfully submit that Congress has no power so to extend the judicial power of the United States.

But it does not appear to be necessary to argue this question extensively on the present motion to dismiss. It was squarely decided in *Spreckels Sugar Refining Company v. McClain*, 192 U. S. 397 (see particularly pages 408 and 409) that where the correctness of the judgment of the Circuit Court of Appeals "depends in whole or in part upon the application or construction of the Constitution or upon the

constitutionality of any act of Congress, drawn in question," and defeated party is entitled, as of right, to have the case re-examined by the Supreme Court. Section 238 of the Judicial Code re-enacts the statutory provision under which this decision was rendered. (See also *Altman v. U. S.*, 224 U. S. 583; *Hull v. Burr*, 234 U. S. 712; *Northern Pacific Railway v. Soderberg*, 188 U. S. 526; *Christianson v. King Co.*, 239 U. S. 362.) The case at bar certainly does present such questions. It is not necessary on this motion to dismiss, to determine whether such questions should be decided in favor of the constitutionality of the statute or against it. It is the fact that the case presents the questions, not the way in which they should be decided, that gives the right to have the case heard in this court. In the *Spreckels* case, *supra*, it was held that the statute in question was constitutional, but that did not, of course, deprive this court of jurisdiction. This court having jurisdiction of the cause, it is, of course, its right and duty to determine the entire case.

Williamson v. United States, 207 U. S. 425;

Burton v. United States, 193 U. S. 283.

It is respectfully submitted that the motion to dismiss should be denied.

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